

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 2310 of 2020

Dinesh Mondal

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Ekramul Bari, Adv. Sk. Imtiajuddin, Adv.
For the State	:-	Mr. Bhaskar Prosad Vaisya, Adv. Mr. Sagnik Chatterjee, Adv.
For the Council	:-	Mr. Gourav Das, Adv.
Heard on	:-	16.12.2021
Judgment on	:-	23.12.2021

Amrita Sinha, J.:-

The petitioner is aggrieved by the order dated 13th November, 2019 passed by the Principal Secretary, School Education Department in compliance of the order passed by the Court on 9th September, 2019 in the matter of Dinesh Mondal –vs- State of West Bengal & Ors.

The prayer of the petitioner for condoning the shortfall in qualifying service period of seven months and twenty-five days was disallowed by the respondent authority.

According to the respondents the same is impermissible in terms of the DCRB Scheme, 1981. The respondent authority referred to the pending appeal preferred by the State of West Bengal being MAT 927 of 2019 challenging the order passed by the

learned Single Judge whereby the Court was pleased to condone deficiency of seventy-six days in the qualifying service of the petitioner.

It was further contended that there was no delay and/or lapses on the part of the respondent authority at the time of issuance of the letter of appointment in favour of the petitioner.

The learned advocate for the petitioner contends that the issue in question has already been decided by the Hon'ble Division Bench of this Court by judgment dated 28th May, 2021 passed in MAT 1917 of 2019 with IA No. CAN 2 of 2020 (The State of West Bengal –vs- Rabindra Nath Ghosh).

It is the further submission of the petitioner that the appeal preferred by the State being MAT 927 of 2019 has not been pressed by the appellants and the appeal was dismissed by an order dated 24th September, 2021.

Reliance has also been placed upon an unreported judgment dated 25th January, 2018 passed by a coordinate Bench of this Court in WP No. 9903 (W) of 2016 in the matter of Gostha Bihari Guchhait –vs- The State of West Bengal & Ors.

Learned advocate representing the State respondents submits that the facts of the present case are dissimilar to the facts of the case that has been decided either by the Single Judge or the Division Bench of this Court.

It has been submitted that the deficiency in service condoned in the matter of Mir Kashem (supra) and Rabindra Nath Ghosh (supra) was less than six months. In the present case the shortfall is seven months and twenty-five days. There is no provision in law for condoning deficiency in qualifying service for more than six months.

Prayer has been made for dismissal of the writ petition.

I heard and considered the submissions made on behalf of both the parties.

Death Cum Retirement Benefit Scheme, 1981 mentions that subject to satisfactory service an employee shall be entitled to pension provided the employee concerned had completed at least ten years of service on attaining the age of superannuation. The Scheme further mentions that upon any condition which it may think fit to impose, Government may condone a deficiency of six months in the qualifying service of the employees of Non-Government/Sponsored/Aided Educational Institutions/Organisations.

The Government by a Memo dated 2nd February, 2009 modified the aforesaid Scheme and laid down that fraction of a year equal to three months and above shall be treated as completed six monthly period of service and reckoned as qualifying service for determining retirement benefit and the period of service below three months will be ignored. The aforesaid implies that a shortfall of maximum six months in service may be condoned by the Government.

The Hon'ble Division Bench in the matter of Rabindra Nath Ghosh (supra) condoned deficiency of twenty-six days in qualifying service.

The Court in Mir Kashem (supra) condoned seventy-six days of shortfall.

In Subhas Chandra Chakraborty (supra) the Court condoned deficiency of only thirteen days in the qualifying service of the petitioner.

In Gostha Bihari Guchhait (supra) the Court directed to condone deficiency of about one year and two months after taking into consideration the fact that the petitioner was in service in the unrecognised section of the school prior to regularisation of his service. The Court was of the opinion that the period of service rendered by the petitioner in the unrecognised section of the school should not be totally ignored.

In the instant case, the petitioner joined service on 25th February, 2010 and retired from service on 30th June, 2019. Thus the petitioner did not complete the

qualifying service period of ten years for receiving his pension and there has been a shortfall of nearly seven years and twenty-five days on attaining his qualifying service period for receiving pension.

It has been submitted by the petitioner that the shortfall arose for no fault on his part but for reasons beyond his control. It appears that the petitioner participated in the recruitment process initiated by the District Primary School Council, Purulia in the year 2006. Interview was held in the year 2009. Appointment letter was issued in favour of the petitioner on 16th February, 2010. Apparently it does not appear that there were any intentional lapses on the part of the respondents in issuing the letter of appointment. The respondents cannot be held to be at fault for delayed issuance of the letter of appointment. Letter of appointment was issued in favour of the petitioner in its usual course and the petitioner joined service within the time specified in the appointment letter.

The ratio laid down in the case of *Gostha Bihari Guchhait (supra)* is quite distinguishable from the case at hand. In *Gostha Bihari* his prior service in the unrecognised school was directed to be taken into consideration for the purpose of calculating the qualifying service period. In the instant case, there is no prior service period of the petitioner that can be added to make up the shortfall. Accordingly, the decision relied upon does not come to the aid of the petitioner.

DCRB Scheme contemplates condoning shortfall in qualifying service for a period of six months. No legal provision has been shown before this Court permitting condoning shortfall beyond a period of six months.

Pension is the amount payable to an employee upon satisfactory completion of a particular period in service. Provision exists for condoning shortfall of six months in the qualifying period. Here, the prayer is for condoning more than six months' shortfall. Such prayer ought not to be allowed, because in that case, each and every

employee with shortfall in qualifying service will approach the Court for condoning the same. If shortfall for more than six months is condoned devoid the provision in law, then there is no reason for refusing to condone shortfall of twelve months or more.

Today an employee with seven months' shortfall has approached Court, tomorrow somebody with eight months and thereafter nine, ten, so on and so forth will approach Court for relief. For which period can the shortfall be condoned? A line has to be drawn somewhere. Same yardstick for condoning shortfall has to be applied for employees under similar facts and circumstances. There ought not to be any discrimination at the time of condoning shortfall of above six months. There must be a limit for relaxation. Otherwise, as and when there will be shortfall in pensionable service, employees will directly approach Court for condoning the same. It is for the employer to decide whether to condone the shortfall or not. It is not open for the Court to rewrite the service condition of an employee.

In view of the discussions made herein above, no relief can be granted to the petitioner in the facts and circumstances of the instant case. The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)