

13.12.2021
SL No. 10
Court No. 24
(P.M.)

WPA 6632 of 2021

**Goalbadan Mandal
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Biswarup Biswas,
Mr. Lutful Hoque
... for the petitioner

Mr. Sarwar Jahan,
Sk. Nayeemul Haque
... for respondent No. 4

Mr. S. Chattopadhyay,,
Mr. Gourav Das
... for the State

Supplementary affidavit filed by the petitioner
in court is taken on rerecord.

The petitioner, after a protracted battle, was
given appointment as Assistant Teacher of Primary
School on 15th March, 2011 and he retired from
service on attaining his normal age of
superannuation on 31st August, 2020. Thus the
petitioner was in service for a period of nine years five
months and seventeen days.

The qualifying period for receiving pension as
per the Service Rules is ten years. There is a shortfall
in the service tenure of the petitioner for which the
petitioner has been held to be not entitled to retiring
pension.

According to the petitioner, there was a delay on the part of the respondent authorities for issuing the letter of appointment. The petitioner was no way responsible in the said delay.

The petitioner places reference to the order dated 6th December, 2010 passed in W.P. No. 5576 (W) of 2010 wherein the Court directed the respondent authorities to take a decision with regard to the issuance of the appointment letter in favour of the petitioner as expeditiously as possible preferably within a period of four weeks but not later than six weeks from the date of communication of the order.

It appears that the said order was passed in presence of the learned advocate representing the Council. The letter of appointment was issued to the petitioner beyond the time as prescribed by the Court.

The petitioner submits that had the respondent authorities issued the letter of appointment within the time as specified by the Court, the petitioner would have had service tenure of more than ten years, hence qualifying for receiving pension.

The petitioner submits that he ought not to suffer on account of the dilatory tactics adopted by the respondent authorities at the time of issuance of the letter of appointment.

In support of his aforesaid submission, the petitioner relies upon a judgment delivered by this Court in the matter of State of West Bengal – Vs – Aparesh Chandra Datta reported in 2016 (2) CHN (Cal) 494.

The Court in the aforesaid writ petition took into consideration the provision of the West Bengal Recognized Non-Government Educational Institutions Employees (Death-cum-Retirement benefit) Scheme, 1981. The court was of the opinion that the concerned authority cannot take advantage of their own wrong and penalize the petitioner by refusing to grant pension on the ground of deficiencies in the service period.

In the instant case it appears that that the respondent authorities delayed in issuing the appointment letter in favour of the petitioner due to which the petitioner could not attain the qualifying service period for receiving his pension.

The learned advocate representing the respondent authorities submits that as per the DCRB Rules the petitioner ought to have approached the respondent authorities with a prayer for condoning the deficiencies of services.

It appears from the documents annexed to the writ petition that by a representation dated 28th

September, 2020 the petitioner did apply before the District Inspector of Schools, Murshidabad praying for condonation of deficiencies in his service period. The aforesaid representation of the petitioner has not been answered by the respondent authorities.

Law in this regard has already been settled by the order passed by the Hon'ble Division Bench of this Court in the matter of Aparesh Chandra Ghosh (supra). The petitioner has applied before the Assistant Directorate of Pension, Provident Fund and Group Insurance by a representation dated 8th April, 2021 for condoning the deficiencies in his service period which has not been answered till date.

Accordingly the instant writ petition is disposed of by directing the Secretary, Department of Primary Education being the respondent No. 1 herein to take a decision with regard to the prayer of the petitioner for condoning the deficiencies in his service period in the light of the order passed by the Court in the matter of Aparesh Chandra Datta (supra) at the earliest, but positively within a period of six weeks from the date of communication of a copy of this order.

The said respondent shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

The petitioner is directed to forward a copy of his representation dated 8th April, 2021 along with all supporting documents in his favour as well as copy of the judgment passed by the Hon'ble Division Bench of this Court in the matter of Aparesh Chandra Datta (supra) to the aforesaid respondent at the time of communicating the order of this Court.

In the event the aforesaid respondent is of the opinion that the petitioner is entitled to receive pension, then necessary consequential steps shall be taken by the concerned respondent(s) at the earliest.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)