

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

W.P.A. 17718 of 2016
Sri Prabir Prosad Roy
– Versus –
The State of West Bengal & Others

For the Petitioner

: Mr. Anami Sikdar, Adv.,

For the State Respondents

: Mr. Joytosh Majumdar, Ld. GP,
Mr. Raja Saha, Adv.,
Mr. Pinaki Dhole, Adv.

Heard on : January 19, 2021

Judgment on : February 03, 2021.

Shekhar B. Saraf, J.:

1. The petitioner who has pressed WPA No. 17718 of 2016, has displayed great fortitude and consistency over the course of the previous three decades in fighting for a cause of action which has never been truly resolved in spite of multiple interventions before this writ court. As a cathartic measure, the petitioner has now mounted a challenge principally, to the provisions of clause 7(e)(iv) of Chapter – III and provisions of Chapter 8 of Chapter -IV of the West Bengal Recognised Non-Government Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981 (hereinafter referred to as the “1981 Scheme”)

2. The facts of this case possess a chequered history and in so far as they are material to this writ petition are circumscribed within a narrow compass and is encapsulated as follows:

- a) Alongside other sponsored candidates, the petitioner had appeared in an interview before a Selection Committee of the Golabari High School on March 25, 1989. The petitioner avers that post such an interview, the legally formed Selection Committee prepared a panel of candidates for the post of Additional Assistant Teacher in the language group wherein the petitioner was placed on top of the panel. But, for reasons attributable to “infighting amongst the members of the Managing Committee” of the aforesaid school, the process of appointment was delayed.
- b) Given the persistent delay in the appointment process, the petitioner pressed the first of his many writ petitions bearing the number registered as C.O. No. 5448(W) of 1994. By an order dated March 9, 1994, Paritosh Kumar Mukherjee, J., had granted an interim order which had directed *the District Inspector of Schools (S.E.), Dakshin Dinajpur* to consider and grant approval for the appointment of the petitioner to the post of Assistant Teacher in the Language Group.
- c) This writ petition bearing C.O. No. 5448(W) of 1994 was considered along with W.P. No. 29603(W) of 1997, filed by another petitioner –

Supriya Deb, by a Division Bench of this Court. The Division Bench had ordered that the matter be remitted back to the learned Single Judge for common hearing and joint disposal. By orders dated April 27, 2004 and April 28, 2004, Kalyan Jyoti Sengupta, J., passed a detailed order which highlighted irregularities in the decision-making process of the Managing Committee of the aforesaid school which was *de hors* the then extant Rules which were applicable. However, the substance of such order recorded the interim order passed by Paritosh Kumar Mukherjee, J., dated March 9, 1994 and reiterated that no appointment could be given without consideration and approval of the previous panel.

- d) Pursuant to the order of the Kalyan Jyoti Sengupta, J., dated April 27, 2004 and April 28, 2004, the concerned District Inspector of Schools (S.E.), Dakshin Dinajpur accorded approval to the panel in which the petitioner had originally secured top position vide a Memo dated October 12, 2004. Based on such approval, the petitioner was furnished an appointment letter dated October 13, 2004. He joined on the following day itself in the post of Assistant Teacher in Language and Literature group against additional vacancy.
- e) While the petitioner was initially approved on the aforesaid post for a period of two years commencing from October 14, 2004 to October 13, 2006 as per the order of the District Inspector of Schools (S.E.), Dakshin Dinajpur, the petitioner ultimately retired from service on September 29, 2012.

- f) Post his retirement from such service, the petitioner was informed by a memo dated January 6, 2012, that he was disentitled to claiming pensionary benefits as he had not met the stipulated 'minimum qualifying service' under the 1981 Scheme; for the uninitiated, such a period is pegged at **ten years**.
- g) Yet again, the petitioner was compelled to knock on the doors of this Court and invoke its writ jurisdiction. In such writ petition bearing W.P. No. 18920(W) of 2012, Samapti Chatterjee, J., by an order dated December 14, 2015, the learned Single Judge had set aside the impugned memo dated January 6, 2012 and had directed *inter alia*, the Secretary, Education Department (S.E.), Government of West Bengal to condone the delay in respect of the petitioner's length of service. In spite of such order, the mandated State respondent dragged their feet as far as compliance with the order of Samapti Chatterjee, J., dated December 14, 2015 was concerned.
- h) Facing persistence sluggishness at the hands of the State Respondents, the petitioner filed a contempt application bearing number CPAN 384 of 2016. The contempt application was ultimately disposed of by an order dated June 23, 2016 which had recorded that a compliance report had been filed. Nonetheless, liberty was also granted to the petitioner to challenge the reasoned order that was passed by the Secretary, Education Department (S.E.), Government of West Bengal dated June 23, 2016, which had rejected the petitioner's

claim for grant of pensionary benefits. The order had reiterated that the shortfall or deficiency in the petitioner's qualifying service could not be condoned as it was beyond the prescribed limit of six months, set by the 1981 Scheme.

i) Accordingly, this impugned order bearing no. 535-SE(Law)/SL/5S-27/2016 dated June 23, 2016 was challenged in the instant writ petition now being considered. The petitioner has additionally also challenged the vires of the provisions of clause 7(e)(iv) of Chapter – III and provisions of Chapter 8 of Chapter -IV of the 1981 Scheme.

3. At the onset of his submissions, Mr. Anami Sikdar, the learned counsel for the petitioner had conceded that the conspicuous impediment *apropos* the pendency of the writ petitions, which the petitioner was compelled to press time and again before this Court, was beyond his control. However, Mr. Sikdar has strenuously contended that as far as the inertness of the various omissions of the State Respondents are concerned, that should not be overlooked by this Court when considering the petitioner's case for the grant of pensionary benefits.
4. Mr. Sikdar also argued that where it was patently clear that the State Respondents had time and again dragged their feet in discharging their statutory obligations, thereby compelling the petitioner to repeatedly agitate the cause of actions which arose vis-à-vis his service, it would be a travesty of justice to agree with the opinion of the State Respondent, primarily,

Secretary, Education Department (S.E.), Government of West Bengal (hereinafter referred to as Respondent No. 2) that the deficiency in the petitioner's 'minimum qualifying service', stipulated under the 1981 Scheme, proscribed the grant of pensionary benefits to the petitioner upon his retirement.

5. In furtherance of his submissions, Mr. Sikdar relied on a Division Bench judgment of this Court, ***Biman Behari Thakur –v- State of West Bengal & Ors.*** reported in ***(2019) 5 WBLR (Cal) 477***. While considering the **Rule 36** of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which is *parimateria* to the provisions of clause 7(e)(iv) of Chapter – III and provisions of Chapter 8 of Chapter -IV of the 1981 Scheme, the Division Bench presided over by Dipankar Datta, J.(as he then was), had directed the Principal Secretary, Land & Land Reforms Department, Government of West Bengal to re-consider the claim of petitioner's pensionary benefits case in spite of the fact that the deficiency of service period under consideration **was more than that of a year, which was much beyond the prescribed limit of six months.**

6. *Per contra*, Mr. Joytosh Majumdar, the learned government pleader appearing on behalf of the State Respondents, has categorically repudiated the grounds of challenge made by the petitioner and has with no ounce of hesitation submitted that since the prescribed period of condonation in deficiency in service period was six months, any period beyond such a stipulated time frame would be in the teeth of the concerned provision and as

a result, the petitioner's claim for grant of pensionary benefits ought to be dismissed considering the fact that the deficiency in the service period of the petitioner is pegged at 2 years and 15 days.

7. Mr. Majumdar has relied upon a catena of decisions pronounced by this Court to assert that since the petitioner's deficiency in service period is beyond the prescribed period of six months under the 1981 Scheme, no further condonation in such service period was permissible. He has relied upon the Division Bench order of this Court dated January 21, 2020 pronounced in ***Pranab Kr. Sarkar -v- State of West Bengal*** bearing WPST No. 176 of 2019. The Division Bench herein was also seized of condonation in period of deficiency in service period under Rule 36 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and had declined to provide any relief given that the period served in regularized service was merely six months.
8. Mr. Majumdar has further relied upon the dictum of the Supreme Court rendered in ***State of Odisha & Others -v- Manju Naik***, reported in **(2020) 11 SCC 809 : AIR 2020 SC 94**, wherein a full bench of the Apex Court disapproved with the view of the respondent's counsel in so as far as not complying with the prescribed qualifying service of ten years for the grant of pensionary benefits was concerned under Rule 39 of the Orissa Civil Services (Pension) Rules, 1992. He has also relied upon the Division Bench order of this Court dated June 4, 2018 pronounced in ***State of West Bengal & Ors. -v- Ram Chandra Pal*** bearing WPST No. 102 of 2017, wherein while the respondent was seeking notional appointment from a particular date, the

Division Bench had rejected such claim on the ground that the respondent had not raised an objection with regard to the date of such appointment immediately and only brought the claim belatedly post the cessation of the then existing employer-employee.

9. I have heard the learned counsels appearing on behalf of the respective parties and perused the materials placed on record.
10. The questions to be considered are:
 - a) Whether the impugned provisions of the 1981 scheme are *ultra vires* the Constitution of India?
 - b) If the first question is answered in the negative, can any pensionary benefits be granted to the petitioner regardless of the years served in regularized service?
11. As far back as in 1989, the petitioner avers that post his interview, the legally formed Selection Committee prepared a panel of candidates for the post of Additional Assistant Teacher in the language group wherein the petitioner was placed on top of the panel. But, for reasons attributable to “infighting amongst the members of the Managing Committee” of the aforesaid school, the process of appointment was delayed. As a consequence, he had pressed C.O. No. 5448(W) of 1994 before this Court, wherein by an order dated March 9, 1994, Paritosh Kumar Mukherjee, J., had granted an interim order which is as follows:

“Having heard Mr. Tapan Kumar Mukherjee, the learned advocate, appearing for the petitioner, the District Inspector of Schools (S.E.), Dakshin Dinajpur is directed to consider and grant approval for the appointment of the petitioner to the post of Assistant Teacher in Language Group in Golabari High School in accordance with law.

Such consideration is to be made within a period of two months from communication of Xerox copy of this order along with an extra copy of this writ petition.

Unless and until such consideration and grant of approval is made by the said District Inspector of Schools, no one should be appointed in the said post of Assistant Teacher in Language Group pending disposal of this writ application.”

Emphasis supplied.

12. Based on a catena of Supreme Court judgments, it is now but axiomatic to state that candidates seeking public employment, which is intrinsically guided and circumscribed by Articles 14 and 16 of the Constitution of India, possess *no fundamental right of selection to a concerned post itself* but merely possess *the fundamental right for consideration to the selection for such post*. Therefore, even though the petitioner might have ended up on top of the list of empaneled candidates prepared by the Selection Committee, that *ipso facto* did not create a vested right of appointment for the petitioner. Yet, one cannot lose sight of the fact that the petitioner has been vigilant of his rights and that he has invoked this Court’s writ jurisdiction consistently, for course correction in the selection process to which he was a party.
13. Subsequently, when Kalyan Jyoti Sengupta, J., passed his order dated April 27 and 28, 2004, he had explicitly recognized that the Managing Committee and erred in acting *de hors* the then prevailing Rules which subsequently

derailed as well as delayed the entire selection process which was already subject to the interim order dated March 9, 1994, passed by Paritosh Kumar Mukherjee, J. The relevant part of the order of Kalyan Jyoti Sengupta, J., is stated as follows:

*“.....Upon fair and plain reading of the aforesaid Rule, it will appear that the task of forming the panel was rested with the Selection Committee and such panel was required to be submitted to the Managing Committee. **It appears that three out of four candidates was chosen as empanelled candidates by the Selection Committee wherein the petitioner’s name appeared to be the first candidate. While submitting the panel the Selection Committee shall make their own recommendations definitely. This part of the duty appears to have been discharged by the Selection Committee. Thereafter, it is the duty of the Managing Committee to do the needful. In terms of Rule 5(d), the Managing Committee has to consider the same duly and then shall forward the panel so prepared by the Selection Committee with all relevant papers to the D.I of Schools for approval and shall authorize the Secretary or Administrator to issue letter of appointment in order of the position of the panel after receiving the panel duly approved by the D.I. of Schools (S.E.).***

*From the records, it appears that the then Managing Committee undertook the task of consideration of the panel and they examined the pros and cons of the same and they found the selection undertaken by them should not be accepted. **In my view, under the provisions of the rule then prevailing the Managing Committee has no jurisdiction or authority to take a decision on the question of legality and validity of the selection process.** They are within their right to consider and discuss and they can observe and record their point of view with regard to the legality and validity of formation of panel and the selection process as well. **They could not, under this Rule, take a decision cancelling the selection process. Their duty was to forward everything with their observation and deliberations to the D.I. or the A.I. They should have awaited the decision of the D.I. on papers being sent to him. Instead they had taken a decision of their own that the fresh selection process had to be undertaken for good or bad reasons. I am of the view that they have no power or jurisdiction to do so.....**”*

14. Therefore, it becomes abundantly clear that the delay in the appointment of the petitioner to the concerned post, caused from the time the final list of empanelled candidates (prepared by the Selection Committee) was submitted to the Managing Committee of the Golabari High School (hereinafter referred to as "Respondent No. 5") up until the time when such panel (wherein the petitioner was the first empanelled candidate) was approved by the District Inspector of Schools, (S.E.), Dakshin Dinajpur (hereinafter referred to as 'Respondent No. 4') on October 12, 2004, pursuant to the order passed by Kalyan Jyoti Sengupta, J., was not attributable to the State but because of an *irregular exercise of jurisdiction committed by the Respondent No. 5*.
15. The petitioner was initially approved on the aforesaid post for a period of two years commencing from October 14, 2004 to October 13, 2006 as per the order of the Respondent No. 4 and the petitioner ultimately retired from service on September 29, 2012. The initial memo no. 17 dated January 6, 2012 issued by the Respondent No. 4 had recorded that the total period served by the petitioner post his appointment was 7 years, 11 months and 15 days and as a result, he was only entitled to receiving gratuity but was ineligible in receiving pensionary benefits. Therefore, it is not disputed that the deficiency in his period of minimum qualifying service of ten years continuous service under the 1981 Scheme, is pegged at 2 years and 15 days.

16. As a consequence of the memo no. 17 dated January 6, 2012, the petitioner pressed writ petition bearing W.P. No. 18920(W) of 2012, seeking the condonation of the requirement of ten years qualifying service as envisaged under the 1981 Scheme, as a means to ultimately stand eligible for receiving pensionary benefits from the State. By an order dated December 14, 2015, Samapti Chatterjee, J. disposed of the writ petition with the following directions:

*“Considering the submissions advanced by the learned Advocates for the respective parties, I am of the view that admittedly due to the pendency of the litigation, the petitioner is shortage of more than one year as prescribed under the law for minimum qualifying service of ten years admittedly for entitlement of pension but **after considering the submissions and after perusing the reported decision in the case of Subhas Chandra Chakraborty (supra) and the unreported decision passed in M.A.T. 715 of 2011 (supra), I am of the view that the impugned order dated 6th January, 2012 issued by the respondent no. 4, the District Inspector of Schools (S.E.), Dakshin Dinajpur cannot be sustained in the eye of law.** Accordingly, the impugned order dated 6th January, 2012 issued by the District Inspector of Schools (S.E.), Dakshin Dinajpur is hereby set aside and quashed.*

I direct the respondent no. 2, Secretary, Education Department (S.E.), Government of West Bengal, to condone the delay in respect of the petitioner’s length of service after giving an opportunity of hearing to the petitioner and/or his authorised representative and other interested parties in the light of the observations, as indicated above, and also in the light of the Hon’ble Division Bench decision as well as the unreported decision considered by this Court and take a decision to condone the petitioner’s length of service within ten weeks from the date of communication of this order and communicate the decision of hearing to the petitioner within two weeks thereafter.

Needless to mention that if it is found by the Secretary, Education Department (S.E.), Government of West Bengal, the

petitioner is entitled to get pension by condoning the shortage of minimum qualifying service of ten years, then the Secretary will take steps and accordingly forward the same to the respondent no. 4, the District Inspector of Schools (S.E.), Dakshin Dinajpur and the said District Inspector of Schools will take steps accordingly for disbursement of retiral benefits of the petitioner immediately thereafter.

With this direction, this writ petition is disposed of.”

17. In **MAT 715 of 2011**, a Division Bench of this Court by an order dated July 4, 2012 had noted that the petitioner in that case could not complete the mandated period of minimum qualifying service of ten years due to pendency of various legal proceedings before the Court which in turn delayed the appointment of the petitioner and no fault could be attributed to him. As a result of the same, the Court had directed that the pertinent authority to condone such a delay so that the benefit of family pension could be granted to the petitioner in that case. Conspicuously, such a similar aspect of delay in appointment due to pending legal proceedings, is not alien to the circumstances faced by the petitioner in this writ petition as well.

18. In **Subhas Chandra Chakraborty -v- State of West Bengal** reported in **2013 (1) CHN (Cal) 438**, the Court had ruled the following:

18. In the present case, the appellant-petitioner could not join the service earlier due to the laches and/or lapses on the part of the respondent authorities in spite of being empanelled as a successful candidate. Ultimately, due to the intervention of this Court, said appellant-petitioner could join the service at a belated stage as a result whereof, there was only 13 days deficiency in qualifying service of the appellant-petitioner herein which should have been condoned by the

State of West Bengal upon exercising power under Clause 7(e)(iv) of the Scheme of 1981.

19. The reason furnished by the Government of West Bengal while rejecting the prayer for condoning the deficiency in qualifying service of the appellant-petitioner cannot be held to be valid and proper ground as the authorities concerned are under an obligation and duty bound to exercise **the power under the Scheme of 1981 for condoning the deficiency in the qualifying service of an employee upto a period of six months in appropriate case and cannot refuse to exercise such power apprehending a possibility of floodgate litigation.** In the present case, there was no valid ground for refusing to condone the deficiency of 13 days in minimum qualifying service of the said appellant-petitioner in order to make him eligible for enjoying the pensionary benefits.

19. When the Respondent No. 2 had considered the case of the petitioner in pursuance of the order of the learned Single Judge by her order dated December 14, 2015, the Respondent No. 2 by a reasoned order dated June 23, 2016, had considered the orders rendered in both **MAT 715 of 2011** as well as **Subhas Chandra Chakraborty (supra)** and recorded the following finding:

“5. Mr. Animesh Bhattacharya, Ld. Advocate appeared in the hearing today on behalf of the petitioner. In the hearing, Ld. Advocate for the petitioner was asked to inform any case wherein the State Government had condoned deficiency in qualifying service of more than six months limit imposed by DCRB Scheme, 1981. **He admitted that he had no knowledge of such ruling to condone deficiency in qualifying service more than 6 months.** However, he relied on an unreported decision passed on 4th July 2012 in MAT 715 of 2011 with CAN 5442 of 2011 with 5443 of 2011 and a reported decision in 2013 (1) CHN (Cal) 438 (Subhas Chandra Chakraborty vs. State of West Bengal. In both cases the deficiency in qualifying service was less than 6 months as given below.

<i>Sl.No.</i>	<i>Case No</i>	<i>Deficiency in qualifying service</i>
<i>1</i>	<i>MAT 715 of 2011</i>	<i>3 months</i>
<i>2</i>	<i>2013(1)CHN(Cal) 438</i>	<i>13 days</i>

6. In the instant case, the deficiency in qualifying service is 2 years and 15 days which is beyond even the power of the Government as per para 7(e)(IV) of the said Scheme wherein power to condone is restricted to 6 months only. **Moreover, the Ld. Advocate for the petitioner after being enquired informed that there was no delay in between the date of appointment (13.10.2004) and the date of his joining (14.10.2004).** The Ld. Advocate has failed to produce any document which reveals that the petitioner agitated the issue of delayed appointment immediately after joining the service. Even the Ld. Advocate for the petitioner confirmed that before joining this service, the petitioner did not render any other service which can be reckoned as pensionable service.”

Emphasis supplied.

20. Based on such a reasoned order, the Respondent No. 2 had refused to grant pensionary benefits to the petitioner. Having gone through the reasoned order dated June 23, 2016, I find no infirmity in the same. It was also urged by Mr. Majumdar that if this Court rules in favour of the petitioner, it would empower similarly situated litigants to approach this Court, paving the way for floodgate litigation and rendering the impugned provision of the 1981 Scheme otiose.

21. In ***Coal India Ltd. -v- Saroj Kumar Mishra*** reported in **(2007) 9 SCC 625**, the aspect of floodgate litigation was categorically rejected by the Supreme Court, in the following words:

“19. The floodgate argument does not appeal to us. The same appears to be an argument of desperation. **Only because there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This Court is bound to determine the rights of the parties.** [See *Zee Telefilms v. Union of India* and *Guruvayoor Devaswom Managing Committee v. C.K. Rajan*]”

22. Therefore, as laid down by the Supreme Court, I am unable to agree with the limb of the argument which had stressed on floodgate litigation but rendering the impugned provision of the 1981 Scheme otiose does possess merit. The petitioner has explicitly challenged the vires of para. 7(e)(iv) of Chapter-III and paragraph 8 of Chapter IV of the 1981 Scheme. The noticeable ground for such challenge, as laid down in the writ petition, is stated as follows:

“a. The restriction of power of the Government for condoning a deficiency of six months only in the qualifying service of the employees of non-government sponsored/aided educational institution/organization is unreasonable, unjust and feudal exercise of power. **It is no where mentioned in the entire statute why the power of the government has only restricted for six months for condonation and what is the basis of it. It is also not clarified what prompted the authority in chair to restrict the power of condonation is only six months and not beyond that.** That being the position power of the government is not absolute within four corners of the constitutional provisions. As such the provisoon of restriction of power of government upto six months only for condonation of qualifying service for entitlement of pensionary benefit to its employees is liable to struck down.”

23. In a recent unreported decision of ***Subhasis Negel –v- State of West Bengal & Ors.*** bearing WPA. No. 191 of 2021 dated **January 19, 2021**, I had culled out certain principles, after examining prominent Supreme Court precedents, based on which constitutional courts should interfere in matters of state policy. These principles are laid down as follows:

“24. Therefore, based on such precedential examination, the following distinct principles emerge:

A. The scope of judicial enquiry apropos policy decisions/matters of the State is restricted to the “sole dimension” of whether such policy decision/matter is either :

- i. against any statutory provision;
- ii. violative of any fundamental rights of a citizen;
- iii. in the teeth of any Constitutional provision;
- iv. manifestly arbitrary/discriminatory;
- v. based on irrelevant consideration.

B. Only the “legality” of the policy decision, and not the wisdom or soundness of such decision can be a subject-matter fit for judicial review under Article 226 of the Constitution of India.

C. Constitutional Courts, such as this Court ought to be hesitant in interfering in matters of such policy or the day-to-day functioning of any departments of the government or any statutory bodies.

D. Negligible interference in policy decisions when such decisions are the outcome of deliberations of technical experts as Courts lack the expertise to determine the basis/factors based on which such decisions might have been taken. This is also inclusive of “economic policies”. ”

24. The fact that the State has restricted the period for condoning the deficiency in minimum qualifying service to six months, in my opinion, is very well within the domain of State policy; it calls for negligible interference as this Court lacks the expertise to determine the very basis on which such a

decision for restricting such period up to six months, has been taken. Furthermore, I do not find any of the five criteria enumerated under paragraph 24A of ***Subhasis Negel (supra)*** to have been triggered in the petitioner's challenge to the impugned provisions of the 1981 Scheme. Accordingly, the first question (a) is answered in the negative.

25. Mr. Sikdar's reliance on the Division Bench judgment of the Court rendered in ***Biman Behari Thakur (supra)*** is distinguishable on facts. Firstly, ***Biman Behari Thakur (supra)*** deals with the case of a Tehsil Mohurrir who was working on commission basis and subsequent to a scheme for absorption, his police verification was completed in the year 2000. But no appointment was given. In that case the petitioner went to the West Bengal Administrative Tribunal in 2005 that ordered the State to consider his appointment. In spite of the said Tribunal's order, the petitioner was given appointment in the year 2007. Owing to the late appointment in 2007, the petitioner did not qualify for pensionary benefits as he had served for 8 years 8 months and 10 days. It was in this background that the Division Bench held that the petitioner had suffered due to the latches on the part of the authorities and the deficient period was required to be condoned. Furthermore, in ***Biman Behari Thakur (supra)*** the petitioner had specifically contended that there was delay in the issuance of his appointment even after the examination of his medical fitness and verification of antecedents in the year 2000.
26. The present case is distinguishable from ***Biman Behari Thakur (supra)*** as the present petitioner was not in employment in any manner with the school.

Moreover, his right to appointment fructified only in the year 2004, after the order passed by Kalyan Jyoti Sengupta, J. Subsequent to the said order, there was no delay in his appointment. While no fault can be attributed to the petitioner in this case as well, the official formalities in issuing the appointment letter to the petitioner by the State was also not unreasonably long, as opposed to the case of **Biman Behari Thakur (supra)**. Moreover, the Respondent No. 2 had recorded in his reasoned order dated June 23, 2016 that the learned counsel appearing for the petitioner, upon being enquired, had informed that there was no delay in between the petitioner's date of appointment (October 13, 2004) and the date of his joining (October 14, 2004). Therefore, in my opinion, the shortfall in the period of minimum qualifying service is well-beyond the scope of the 1981 Scheme and Mr. Sikdar's reliance upon **Biman Behari Thakur (supra)** does not help his case.

27. Moreover, the delay in the appointment of the petitioner in the case of **Biman Behari Thakur (supra)** was patently attributable to the lethargy exhibited by the State. However, I have previously noted that the delay in the final appointment of the petitioner in the present case was not attributable due to any fault of the State but due to an *irregular exercise of jurisdiction committed by the Respondent No. 5*. What is also patently clear is that post the order of Kalyan Jyoti Sengupta, J., dated April 27 and 28, 2004, appointment was offered to the petitioner on October 13, 2004 and he had joined on October 14, 2004. There was no undue delay in his appointment post the course correction of the selection process that was set in motion through the order

of Kalyan Jyoti Sengupta, J. The delay in the cases reported in **MAT 715 of 2011** and **Subhas Chandra Chakraborty (supra)** were essentially condoned, backed by this Court's interference, because the deficient period of service was within the permissible limit of six months set by the 1981 Scheme. The petitioner's deficient period of service (2 years and 15 days) is much beyond the scope of the 1981 Scheme and therefore does not warrant any interference. Question (b) is so answered. Therefore, while the petitioner remains ineligible to receive any pensionary benefits under the 1981 Scheme, any gratuity, if payable under the said Scheme, shall be paid to the petitioner within four weeks, if not already paid.

28. With these observations, W.P.A. 17718 of 2016 is disposed of. There will be no order as to costs.
29. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)