

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Saugata Bhattacharyya

MAT 669 of 2020

With

CAN 2 of 2020

The State of West Bengal & Ors.

Vs.

Parimal Chakraborty & Ors.

For the Appellant : Mr. Joyotosh Majumder, Ld. G.P.,
Mrs. Sucharita Paul, Adv.
Mr. Sayan Ganguly, Adv.

For the Respondent : Mr. Prasanta Behari Mahata, Adv.,
Mr. Lalratan Mondal, Adv.,
Mr. Dilip Kumar Sadhu, Adv.

Hearing concluded on : 25.03.2021

Judgment Dated : 28.05.2021

Soumen Sen, J.: The appeal is arising out of an order dated 11 September, 2019 in W.P. No. 25001(w) of 2014 decided on 31st July, 2019. The learned Single Judge allowed the writ petition by directing the Government departments concerned to take appropriate steps within a period of 6 months from the date of the judgment for granting the pension to the writ petitioner in accordance with law.

This order is under challenge.

Before we advert to the submissions made on behalf of the parties, we briefly narrate the facts for proper appreciation of the issues.

The writ petitioner was appointed as an organizing teacher in Uday Chand Vidyapith Junior High School (in short 'the said School'), at Raiganj, Uttar Dinajpur on February 28, 1979. The Organising Managing Committee of the said School initiated legal proceeding for recognition of the School by the West Bengal Board of Secondary Education (in short 'Board') as the Board was not inclined to grant recognition and ultimately the Board by its letter dated 29th November, 2000 recognized the School with effect from 1st May, 2000 and the petitioner's service as a assistant teacher along with some other teachers of the said School was approved also with effect from 1st May, 2000. The petitioner was superannuated from his service on and from 31 January, 2010 and thus he was in approved service from 1st May, 2000 to 31st January, 2010 which is little less than ten years and thus little less than the qualifying service for the purpose of pension and gratuity.

The Secretary of School Education Department of Government of West Bengal in its order dated 8th August, 2014 held that the condonation of shortfall in qualifying service for the purpose of pension cannot be granted to the petitioner as the West Bengal Non-Government Aided Educational Institution Employees (Death-cum-Recruitment-Benefit) Scheme, 1981 (in short 'DCRB Scheme') cannot be made applicable in the case of the petitioner who had qualifying service of less than ten years.

While challenging this decision of the Secretary dated 8th August, 2014 the petitioner beside several grounds taken in the writ application has relied upon several judgments passed by the Court in somewhat similar matters i.e. grant of pension to the employees who do not have the qualifying service where the petitioner similarly placed as the writ petitioners were granted pension by condoning the deficiency in qualifying service.

The Board gave recognition to the said School. The District Inspector of Schools (Secondary Education) Government of West Bengal in terms of the Memo no.S/Recog/2000/1040 dated November 29, 2000 with effect from May 1, 2000 for three years as a co-educational school gave approval of appointment of some organising teachers of the said newly recognised junior high school including the petitioner on 04.01.2001. The Board in the Memo dated 29th November, 2000 has categorically mentioned that there was a fresh inspection of the District Level Inspection Team (hereinafter referred to as "DLIT") on 16th January, 1999. It appears from the letter dated 2nd November, 2010 issued by the District Inspector of School Uttar Dinajpur that subsequent to the recognition of the school with effect from 1st May, 2000. The District Inspector of School approved the appointment of the writ petitioner as an assistant teacher with effect from 1st May, 2000. It is not in dispute that at the time when the DLIT inspected the school prior to consideration for recognition the petitioner was discharging his duties as an assistant teacher being appointed earlier by the organising managing committee of the incumbent school. We reiterate that this fact has not been disputed by the State before us. The petitioner's service as a teacher could

not have been approved by the Government of West Bengal by its Memo No. 41 dated 4th January, 2000 had the name of the writ petitioner not been included in the DLIT report in respect of the said School.

The learned Single Judge in allowing the writ petition had relied upon the judgment of Justice Tapabrata Chakraborty in **W.P. No. 7575 (W) of 2006** decided on 2nd February, 2014 (**Kartick Chandra Das v. State of West Bengal & Ors.**) and few documents annexed to the writ petition which, inter alia, include the report of the (DLIT) dated 16th January, 1999 to uphold the claim of the writ petitioner for pension under the said scheme.

In **Kartick Chandra Das** (*supra*) the learned Single Judge upon consideration of the relevant rules of the 1981 Scheme allowed the writ petition in favour of Kartick Chandra Das for the following reasons:

“Upon hearing the submissions made on behalf of the respective parties and upon considering the materials on record, I find that the discharge of service of the petitioner with effect from 8th November, 1971 does not stand disputed by the respondents and in the DLIT report dated 29th September, 1992 leading to recognition of the said school the petitioner’s name features as a teaching staff serving in the unrecognized school and in the backdrop of such factual scenario, the period of service rendered by the petitioner, though in an unrecognized school, should not be altogether ignored and should be taken into consideration to make up the short fall in computing the service for the purpose of granting benefit of usual pension and gratuity to the petitioner. A grant of pensionary relief to the retired person was introduced by the Government as a social beneficial scheme and when admittedly there is no dispute that the petitioner had rendered service since the year 1971, the respondents cannot deny to condone the deficiency of qualifying service of the petitioner through grant of notional approval only for the purpose of disbursement of pensionary benefits.”

In the aforesaid circumstances, I direct the respondents to grant usual pension and gratuity to the petitioner treating the said petitioner in permanent service at least for a period of ten years before retirement on

attaining the age of superannuation, through grant of notional approval.”(emphasise supplied)

The learned Single Judge after taking into consideration the DLIT report dated 16th January, 1999, wherefrom it appeared that the writ petitioner was working as a teacher and his name appeared at serial no.3 in the report of DLIT dated 16th January, 1999, the service of the writ petitioner, as teacher, was subsequently approved by the Government of West Bengal on 4th January, 2001, in view of the similarity with Kartick Chandra Das allowed the writ petition relying upon the ratio in ***Kartick Chandra Das*** (*supra*).

The learned Counsel appearing on behalf of the writ petitioner has drawn our attention to the order passed by the Hon’ble Division Bench in **FMA 677 of 2015** decided on **18th February, 2020** (***The State of West Bengal vs. Kartick Chandra Das***) disposing of the appeal preferred by the present appellants against the judgment and order of the learned Single Judge in ***Kartick Chandra Das*** (*supra*). The learned Counsel has submitted that in view of the order of the Division Bench it is no more open for the appellants to deny the benefit to the writ petitioner who is similarly placed as that of ***Kartick Chandra Das*** (*supra*).

The Hon’ble Division Bench dismissed the appeal, following the earlier Division Bench judgment in ***Haradhan Mahato v. The State of West Bengal*** reported in **2013 (3) CLJ (Cal) 520**. The Hon’ble Division Bench has observed:

“Admittedly, the service period of the said respondent is much below ten years. Strictly going by the letters of the rule, it is not qualifying service.

The question is this. The said respondent rendered continuous service in the school since 1971. The DLIT inspection had taken place on 29th September 1992. The school was recognised in 2000. The respondent’s service was acknowledged by the government by regularising it from 1st May 2000. It took the government eight years after inspection to recognise the school and the service of the said respondent. He could have reasonably expected such recognition at a time contemporaneous to 29th September 1992.

In those circumstances, could he be said to have rendered qualifying service?

Punjab State Electricity Board & Anr. v. Narata Singh & Anr. reported in (2010) 4 SCC 317 is about work-charged service in the Punjab Government under the rules relating to Punjab and Haryana. It is true that this judgement recognised it as qualifying service. In that case the service of the employee was on “work-charged basis.” But examination of the judgement tells us that this work-charged service is under the government and temporary. This temporary service was added to the permanent service subsequently rendered and treated as qualifying service in the said judgement. Such was also the case in an unreported decision of the Supreme Court in Habib 4 Khan v. State of Uttarakhand & Ors. decided on 23rd August 2017.

In State of West Bengal & Ors. v. Aparesh Chandra Datta & Ors. reported in 2016(4) WBLR (Cal) 574, the deficiency in service of the respondent was two months and one day. This deficiency was directed by the division bench to be condoned by exercise of discretion by the government under paragraph 7(e)(iv) of the scheme. The respondent’s case is nowhere similar to this.

However, the said division bench judgement of our court in Haradhan Mahato v. The State of West Bengal & Ors. reported in 2013(3) CLJ (Cal) 520 is directly in point and in favour of the respondent-writ petitioner. Learned counsel appearing for the State could not show us any material to suggest that this judgement has been reversed in the Supreme Court or for any other reason not acted upon by the State.

We have no option but to follow the said division bench judgement because of the similarity of facts.

For those reasons, we are not minded to interfere with the impugned judgement and order of the learned single judge dated 7th February 2014.”

The learned Government Pleader appearing on behalf of the appellant has submitted that the decision of the appellate court is not final as in a

Special Leave Petition preferred by the appellants against the appellate order being **S.L.P. no. 15705 of 2020 (*The State of West Bengal & Ors. v. Kartick Chandra Das & Ors.*)**, the Hon'ble Supreme Court disposed of the SLP on February 4, 2021 with the observation that the "question of law is left open." The learned Government Pleader has submitted that the writ petitioner knew at the time of his appointment by the appropriate authority on 4th January, 2001 that he would not qualify under the 1981 Scheme and has accepted all the retiral benefits available to him without any protest and now the writ petitioner cannot turn around and make a claim for consideration of his past service after the cessation of the employer-employee relationship.

The learned Government Pleader has submitted that the learned Single Judge in ***Kartick Chandra Das*** (*supra*) and the Hon'ble Division Bench in appeal against the said order did not decide the questions of law presently raised before us.

The learned Government pleader has raised the following questions of law for our determination. They are:

1. *Whether the period of service rendered as an organizer non-teaching staff prior to approval of appointment can count for condonation of shortfall of qualifying service in terms of the provisions of the West Bengal Recognised Non.Govt. Educational Institution Employees (Death-cum-Retirement Benefits) Scheme, 1981 for grant of pensionary benefits, and more particularly in the absence of any challenge to the provisions of such scheme?*
2. *Whether it is open to such a retired staff to sleep over his rights, if there be any, and to approach the Court of writ years later and to seek sympathetic consideration on the ground of deprivation of pensionary benefits?*

3. *Whether service rendered to an institution before its recognition will be counted for pension?*
4. *What is the entitlement of pension?*
5. *Whether there is any relaxation towards granting of pension?*
6. *What is a recognized institution?*
7. *Whether the service to an unaided (pays and allowances) recognized institution is counted as qualifying service for pension?*
8. *What is educational institution?*
9. *How fraction of a year less than 3 month is granted for pension?*
10. *What is approved service?*

It is submitted that the aforesaid questions of law were urged before the Hon'ble Supreme Court in the Special Leave Petition preferred by the present appellants against the judgment of the Division Bench in **Kartick Chandra Das** (*supra*) and it can be observed from the order disposing of the Special Leave Petition that "the question of law raised, are left open."

The learned Government Pleader has argued that unless the educational institution is recognized the question of approval of the teacher does not arise. Recognition follows approval. It is immaterial that the teacher may have been in continuous service for a good number of years prior to recognition. Our attention is drawn to Chapter III Rule 6(d) to show that the teacher in order to become eligible under the Scheme of 1981 has to complete 10 years of continuous service as qualifying service and this service has to be counted from the date of approval of the appointment. It is argued that Rules 7(e)(iii) and 7(e)(iv) are continuous provisions and are to

be read in a harmonious manner. The power to condone six months so as to qualify for pensionary benefits can only be extended to employees who are appointed against a permanent post as temporary employees and, in the event, at the time of superannuation it is found that there is a deficiency of six months in the qualifying service, the authorities concerned can condone the said deficiency upon imposing such terms and conditions as may be deemed fit and proper.

It is submitted that the respondent before us was not appointed as a temporary teacher in the unrecognized institution against any post sanctioned by the appellants and accordingly the question of his appointment against any sanctioned post would not arise at all since the recognition of the institute was granted later to the date of his initial appointment as teacher in the educational institution, as claimed in the writ petition.

It is strenuously argued that writ petitioners after having received all other admissible retiral benefits filed by the writ petition after a considerable delay and, accordingly, they are not entitled to any relief on the ground of delay, laches and acquiescence.

In deciding the issue arising before us, it is necessary to refer to Rules 7(e)(iii) and rule 7(e)(iv) of Chapter III of the Scheme of 1981.

The said Rules are stated below:-

“7(e)(iii): Approved temporary service including approved service on leave or deputation vacancy in one or more institutions shall

count towards pension subject to fulfilment of other conditions for grant of pensions.

Fractions of a year equal to six months and above shall be treated as a completed six monthly period for the purpose of calculation of any pension under this Scheme.

7(e)(iv): 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.

Note: The deficiency should not be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity or family pension. In other cases power should be restricted to the employees drawing pay not exceeding Rs.425.00 per month at the time of retirement on invalid or compensation pension.”

It is equally important to refer to memo no.26-SE(B)/IM-13/08 dated 2nd February, 2009 issued by Government of West Bengal, School Education Department, Budget Branch, the said memo is quoted below:-

“GOVERNMENT OF WEST BENGAL

School Education Department,

Budget Branch

No.26-SE(B)/IM-13/08

Dated: February 2, 2009

Sub: Calculation of the length of qualifying service for Retirement Benefit-Modification of the West Bengal Recognised Non-government Educational Institution Employees (DCRB) Scheme, 1981.

In terms of para 7(e)(iii) of the West Bengal Recognised Non-Government Educational Institution Employees (DCRB) Scheme, 1981, fraction of a year equal to six months and above shall be treated as a completed six monthly period for the purpose of calculation if any pension under the said Scheme in case of Government employees, a fraction of a year equal to three months and above is treated as completed six monthly period of Service and reckoned as Qualifying Service for the purpose of pensionary benefit in terms of Memo No.14791-F dated 16.12.83 Government in School Education for sometime past was considering extension of the said benefit to employees of Non.Govt. Aided Educational Institutions.

After careful consideration of the matter the Governor is pleased to decide that a 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 benefits and the period of service below three months will be ignored.

This order shall be deemed to have taken effect from the date of issue of this order.

This order issues with the concurrence of Finance Department vide their U/O/No. 896 Pension Br. Dated 17.12.08.

The Pension Cases already settled need not to be re-opened.”

The memo dated 2nd February, 2009 has stated that for the purpose of calculation of retirement benefits a fraction of a year equal to three months or more shall be treated as completed six months period of service that is to be reckoned as qualifying service for determining retiral benefits.

The question to which we have not received any satisfactory answer from the learned Government Pleader as to what would be the effect on the service of a teacher whose appointment is delayed due to inordinate delay in granting recognition to the school concerned.

In the instant case, the petitioner was appointed as an organising teacher by the organising Managing Committee in 1979 but his service has been approved with effect from 1st May, 2000 based on the DLIT inspection report dated 16th January, 1999. The school authorities from time to time had approached this court for granting recognition by the Education Department and it would be evident from the letter dated 29th November, 2000 from the Secretary, West Bengal Board of Secondary Education that the recognition was granted in terms of the order passed by the learned Single Judge dated 13th July, 2000 based on a fresh inspection of the DLIT on 16th January, 1999. The DLIT recommended in favour of granting recognition to the school and based on such recommendation the Executive Committee of the Board reconsidered the matter and decided to grant recognition on 29th November, 2000 to the school as a Junior High School provisionally for a period of 3 years with effect from 1st May, 2000 as a co-education school. It thus, appears from the record that there has been a delay of near about 1 year 4 months in granting recognition to the school which has now been used as a shield in denying pension to the writ petitioner on ground of deficiency in service. It cannot be disputed that had there been a recognition granted to the school immediately after the DLIT's recommendation dated 16th January, 1999, there would have been

no occasion for the appellant to deny pensionary benefits to the writ petitioner as he would have in that case qualified for pension having completed 10 years in service for the purpose of pension and gratuity. In fact, the writ petitioner has relied upon in paragraph 7 of the writ petition has referred to similar instances where the Joint Secretary to the Government of West Bengal had condoned deficit of 4 months 11 days to one of the Assistant Teachers of Islampur DUG High Madrasa, namely, Mr. Munsef Ali which clearly shows that the appellant in appropriate cases have condoned the deficit in qualifying service and one of such instances where such condonation is permitted or should have been allowed where there has been a delay in recognition to the school in spite of recommendation of by the DLIT in favour of recognition of school. The date of last inspection by the DLIT is the relevant date where the DLIT recommends unconditionally for recognition without suggesting removal of any infrastructural deficiencies. The appellants being Government Authorities are required to act fairly and not discriminatorily. The delay on its part in discharging its duties in granting recognition to school should brook no delay and an impediment to grant relief to a teacher who had been discharging his duties diligently and whose presence was noticed, recognised and taken note of by the DLIT during inspection. It is a valid and relevant consideration in deciding whether the authorities should condone deficiency in service if it occurs in relation to a teacher of an organising school on recognition.

In the present case, if the recognition could have been granted immediately after the DLIT inspection or within a reasonable time the teachers would have been eligible under the relevant rules to get the benefit under the Scheme of 1981 as the shortfall may not arise at all in their cases. The beneficial nature of the Scheme of 1981 could not be doubted, having regard to the scope and object for which the said scheme was framed and various circulars issued under the said scheme by which the calculation for qualifying service was amended for the benefit of the employees. For the purpose of calculation for the period of six months under 7(d)(iii) and 7(e)(iv) the initial basis of the calculation to consider fraction of a year as six months stands reduced to three months, meaning thereby that for successful completion of a period of three months in a particular year, the entire year shall be counted for the purpose of computing the qualifying period of service.

The said circular dated 2nd February, 2009 clearly brings out the beneficial object of the Scheme of 1981. It is true that unless an institution has been granted recognition the teaching and non-teaching post cannot be sanctioned, moreover, the staff pattern is a relevant consideration for approval of the post.

The recognition of the school was initially governed by the Board of Secondary Education, West Bengal circular No.21/May 1983 dated 25th May, 1983. The said circular contains various conditions to be fulfilled by the school seeking recognition as a high school with permission to present candidates for the school final examination. One of the criteria is that there

should be at least nine whole time teachers and on the staff including a Head Master/Head Mistress for six classes. It is desirable that at least 1/3rd of the teaching staff should be trained. All the teachers should preferably be graduates but there should be no teacher on the staff who has not passed at least the intermediate examination of a recognised university or its equivalent. While applying for recognition the school should be under the management of the committee in which representatives of the guardians, teachers and all other persons interested in the education of the child of the locality are properly represented. The said circular also lays down the procedure for permission of all applications for recognition as a junior high school.

The constitution of the Managing Committee in the school is governed by the management rules dated 15th July, 1969 and has been modified last on 8th January, 2010. The Management of the Recognised Non-Government Institution (Aided and Non-aided) Rules, 1969 (in short 'Managing Committee Rules') is applicable.

In the instant case, as the school was functioning since February, 1979 the aforesaid Rules of 1969 would be applicable. The school was not managed by the State Government. Rule 2(ff) of the Managing Committee Rules defines sanctioned post to mean the post of teaching or non-teaching staff sanctioned by the Director or by an Officer authorised by him in this behalf. Every recognised non-government institution shall have a committee to be constituted in the manner and for the purposes mentioned in the said rules. Subsequently, the Director of School Education, West Bengal on

20.12.1984 issued a circular being No.2605 (16)-Sc/S) regarding approval of appointment of teaching and non-teaching employees of the newly recognised and upgraded secondary school. In the said circular it is categorically stated that approval of appointment should be followed strictly in adherence of the principles laid down in the said rules. The said circular categorically states that the principles laid down are followed for schools recognised with effect from 1985 onwards, whereby current inspection report will be insisted upon and in no case will claim of teachers not found on inspection be entertained. (emphasis supplied)

It further states that all cases relating to approval of appointment of teachers and non-teaching employees of the newly recognised high and junior high schools should be disposed of as expeditiously as possible. It, however, states that the high school teachers should be approved with effect from the date of recognition/upgradation provided that:

- i. *they possess the prescribed minimum educational qualifications as per requirement of the school;*
- ii. *they have the prescribed age on the date of appointment in the school;*
- iii. *they were appointed prior to the date of final inspection of the school, made in connection with its recognition;*
- iv. *in cases of junior high schools, they were in service of the school on the date of final inspection of the school made in connection with its recognition. Cases of the teachers-in-position duly appointed within the admissible strength should be considered, provided they were duly appointed by the management of the*

school and they rendered a considerable period of service to the school prior to its recognition.

The learned Government Pleader has tried to impress upon this court that the date of recognition of the educational institution and approval of the organising teacher on such recognition is a relevant and crucial date in determining the length of service of the teachers in terms of the Scheme of 1981. It is submitted that the said scheme in rule 5(a)(ii) defines approved teaching and non-teaching employees to mean employees of recognised educational institution whose services have been approved by the authorities referred to in sub-rule 5(a)(i). In 5(a)(i) “affiliated/approved” has been defined to mean recognised by the West Bengal Board of Secondary Education/West Bengal Madrassah Education Board/District School Boards etc. The “competent authority” under rule 5(i) means the Director and the State Government in the Education Department. “Employee” in rule 5(k) means a teaching or a non-teaching staff of an educational institution, the appointment of whom has duly been approved by the Director or any other authority as referred in sub-rule 5(a)(i). Chapter III rule 7 deals with service qualifying for pension.

The learned Government Pleader submits that rules 7(b) to 7(d) are relevant provisions requiring consideration. Rule 7(b) states that continuous service of a whole time approved employee in any educational institution, shall count as qualifying service. 7(d) deals with service rendered before partition, the said rule reads:-

“7(d) Service rendered before partition, i.e. during the period up to 14th August, 1947, by an employee in any affiliated institutions in areas included in East Pakistan (now Bangladesh) shall qualify for pension and the period of break from the date of leaving the institutions in East Pakistan (now Bangladesh) and the date of appointment in any institution in West Bengal is to be treated as automatically condoned.

Affiliation of a school will be verified on the basis of documentary evidence. In the absence of documentary evidence, contemporary evidence duly signed by Director or any officer authorised by him, will be accepted.

Service rendered by an employee under Government if any will count towards pension. The service in an institution before its recognition will not count.”

We quote the aforesaid rules as the learned Government Pleader has relied upon the last sentence of the said rule, i.e. “service in an institution before its recognition will not count” and sought to apply the same in the instant case, although the said sentence was in the context of an employee rendering service before Partition in East Pakistan (now Bangladesh).

However, we have no difficulty in relying on the said sentence as we are not opposed to the view that unless an institution has not been recognised, the approval of teaching and non-teaching employees would not arise at all. The period of mandatory completion of 10 years as qualifying service is mentioned in Chapter IV rule 8 which deals with eligibility for pension. The said rule reads:

“Rule 8. Subject to satisfactory service, an employee shall be entitled to pension provided that in case of (i), (iii) and (iv) below, the employee concerned has completed at least ten years of qualifying services:

(i) on attaining the age of superannuation, or thereafter on the expiry of the period of approved extension, or

(ii) on voluntary retirement after completing 20 years of qualifying services, or

(iii) on being declared permanently incapacitated for further service by the Chief Medical Officer of the State Government in the district concerned or any Medical officer of equivalent status authorised by the pension sanctioning authority, or

(iv) on termination of service due to abolition of the post, or closure of the Institution concerned due to withdrawal of recognition or other valid reasons.”

The learned Government Pleader has submitted that the aforesaid rules clearly show that recognition precedes approval and until the institution is recognised the teachers appointed by the educational institution prior to recognition is immaterial and cannot be counted to make good the deficiency in service.

When the inspection report shows that the teachers were discharging their duties continuously prior to the recognition of the institution and there is no fault on the part of the educational institutions in furnishing the required details on which the approval ought to have been granted, the delay caused in granting recognition would be a relevant factor in considering whether there has been an inordinate delay on the part of the

approving authority which has caused prejudice to the teachers who would have been otherwise eligible but for the delay and latches on the part of the approving authority.

In interpreting the period of six months in 7(e)(iv), the court is required to take into consideration as to whether there has been an application for recognition and the time consumed in granting such approval. If the recognition/approval is based on the basis of the DLIT report, the date of the last DLIT report recommending recognition of the institution should be the relevant date in the case at our hand on the basis of which the qualifying service of a teacher/petitioner needs to be calculated for the purpose of extending benefits under the Scheme of 1981. Any other interpretation would be harsh, arbitrarily, burden-some and it would run counter to the very object for which the Scheme of 1981 was framed. The period of six months mentioned in 7(e)(iv) read with the circular dated 2nd February, 2009 and, keeping in mind the beneficial nature of the said scheme, we are of the view that the period of ten years qualifying service in the present case needs to be counted from the date of the last DLIT report and not from the date of approval/recognition of the institution only for sanction of pensionary benefits and not for any other service benefits.

The learned Government Pleader has relied upon the judgment of the Hon'ble Supreme Court in ***Roshan Lal Tandon v. Union of India*** reported in **AIR 1967 SC 1889** to argue that the relationship is purely contractual and governed by the service condition. The status of the petitioner was different prior to his service being approved by the Government of West

Bengal on 4th January, 2001. It is submitted that in absence of any rules relating to grant of pension upon condonation of deficiency in qualifying service the learned Single Judge ought to have dismissed the writ petition.

The learned Government Pleader has relied upon Co-ordinate Bench decisions in **WPST 64 of 2018 (*Smt. Gouri Sen Mallick v. State of West Bengal and Ors.*)** decided on 19th November, 2018, **WPST 176 of 2019 (*Pranab Kumar Sarkar v. State of West Bengal & Ors.*)** decided on 21st January, 2020 and **WPST 102 of 2017 (*The State of West Bengal & Ors. v. Ram Chandra Pal*)** decided on 4th June, 2018 in aid of his submissions that unless the rules permit for condonation of deficiency in qualifying service, the court has no jurisdiction to extend the said period. Moreover, if the petitioner is found to have accepted all retiral benefits on the basis of his appointment, the petitioner cannot claim any pensionary benefits thereafter as the claim of the petitioner would be barred by delay, laches and acquiescence.

The learned Counsel for the writ petitioner has relied upon the Division Bench judgment in ***Haradhan Mahato* (supra)** and the Division bench judgment in ***Kartick Chandra Das* (supra)** in support of his submissions and has prayed for dismissal of the appeal.

In ***Haradhan Mahato* (supra)** the appellant was denied all pensionary and other retiral benefits on the ground of shortfall in qualifying service. Haradhan Mahato was appointed initially on 1st July, 1988 as a Seasonal Khalashi under the Kangsabati Canals Division No.1 along with several

other persons and since then the petitioner had been discharging duties of Night Guard. An office order, bearing no. 4078, dated 11th April, 1996 was issued to permanently absorb the petitioner in the post of Night Guard with effect from 18th April, 1996. The petitioner retired from service on 31st January, 2006 on attaining the age of superannuation. After retirement, the petitioner was denied by the respondent authorities from enjoying the benefit of usual pension and gratuity, which led the petitioner to file an application, bearing O.A. no. 7849 of 2008, before the West Bengal Administrative Tribunal, which was disposed of by the learned Tribunal by judgment and order dated 23rd April, 2009 without granting any relief to the petitioner.

Haradhan Mahato challenged this decision by filing the writ petition. This decision of the tribunal denying the benefit of usual pension and gratuity to Haradhan for not completing the prescribed period of 10 years, which ultimately turned out to be a period less than three months, did not find favour with the Hon'ble Division Bench. The plea of the respondent authorities that the post in question was formally sanctioned and the formal office order was issued at the far end of the service career of Haradhan justified not extending the service benefits in spite of Haradhan discharging his work since 1st July, 1968 was held to be arbitrary in paragraphs 10, 11 and 12 of the report of the Division Bench judgment, which states:

“10. The aforesaid delay in issuing the formal office order regularising service of the petitioner cannot deprive the said petitioner from enjoying the benefit of usual pension and other retiral benefits on the ground that the said employee did not complete 10 years of service period, which is

factually not correct in view of the fact that, admittedly, from the office record we find that the date of entry of the petitioner in the service as seasonal Khalashi under the Kangsabati Canals Division No.1 is 1st July, 1968.

11. For the aforementioned reasons, the benefit of usual pension and gratuity should not be denied to the petitioner on the alleged plea that the said petitioner did not complete 10 years service before retirement.

12. In the aforesaid circumstances, we are unable to approve the decision to the learned Tribunal and, therefore, we set aside the same. The Respondent Authorities are directed to grant the usual pension and gratuity to the petitioner treating the said petitioner in permanent service at least for a period of 10 years before retirement on attaining the age of superannuation.”

Similar view was expressed by a subsequent Co-ordinate Bench in WPST no. 31 of 2014 (**Pastu Deb Singha v. State of West Bengal & Ors**) decided on 30th April, 2014.

The Co-ordinate Bench noticed and relied upon **Haradhan Mahato** (*supra*) and held:

“4.From the available records we find that the petitioner herein was initially appointed as a casual worker under Kangsabati Canals Division No. 1 along with several other persons on 1st July, 1968 and had been discharging duties of Night Guard since then.

5. By the Office Order No. 4078 dated 11th April, 1996 the said petitioner was appointed in the post of Night Guard with effect from 18th April, 1996. It is the stand of the respondent Authorities that the said post of Night Guard was formally sanctioned with effect from 1st of May, 1997 although it is not in dispute that the Superintending Engineer (I), Kangsabati Circle, Bankura, issued the office order No. 4078 dated 11th April, 1996 whereby and whereunder the said petitioner was appointed to the post of Night Guard with effect from April, 1996.

6. There is, however, no dispute that the said petitioner retired from service on 31st January, 2006 on attaining the age of superannuation. According to the respondent authorities the service life of the petitioner should be calculated with effect from 18th April, 1996 till the date of retirement of the said petitioner and, therefore, the said petitioner did not complete 10 years of permanent service under the Government in order to claim the benefits of usual pension and gratuity. Although the said petitioner was formally appointed to the post of Night Guard pursuant to the office Order No. 4078 dated 11th April, 1996 with effect from 18th April, 1996, it cannot be said that the said petitioner did not serve the respondent Authorities, namely, the Kangsabati Canals Division No. 1, before issuance of the aforesaid Office order. As a matter of fact, the Director of Personnel & Ex-Officio Chief Engineer, I. & W. Directorate by the letter bearing No. 1551-CIE/5E-25/85 dated 11th March, 1991 requested the Secretary, I. & W. Department, Government of West Bengal for issuing necessary orders regarding regularisation of services of seasonal employees including the petitioner herein. Along with the aforesaid letter a list of seasonal workers was also forwarded wherein the name of the petitioner herein was shown against serial No. 86 and date of his first entry into the service has also been specifically mentioned as 1st July, 1968.

7. In the aforesaid circumstances, the service rendered by the petitioner as seasonal worker under Kangsabati Canals Division No. 1 cannot be totally ignored while computing the period of service actually rendered by the said petitioner in the concerned establishment for the purpose of sanctioning the benefit of usual pension and gratuity. The long uninterrupted service rendered by the petitioner as seasonal khalashi under Kangsabati Canals, Division No. 1 since 1st July, 1968 cannot be overlooked while calculating the actual period of service of the petitioner for the purpose of granting benefit of usual pension and gratuity.”

(emphasis supplied)

The later decision also refers to a judgment delivered on the self-same date i.e. 30th April, 2014 in **WPST 532 of 2010 (Nemai Ch. Chatterjee & Ors. vs. State of West Bengal & Ors.)**.

The Hon'ble Supreme Court dismissed the SLP in **Kartick Chandra Das** (*supra*) the order of the Hon'ble Supreme Court dated 04.02.2021 reads:

“In view of the long delay of eight years from the date of inspection and grant of recognition to the school in question, we are not inclined to interfere with the impugned order. The Special Leave Petition is accordingly dismissed. We clarify that we have not commented on the merits and the question of law is left open”

It is significant to mention that the delay of the approving authority to approve the service of Kartick Chandra Das for a period of 8 years was taken note of and appears to be the factor for which the SLP was dismissed. In **Kartick Chandra Das** (*supra*) the writ petitioner rendered continuous service in the school since 1971. DLIT inspection took place on 29th September, 1992. The school was recognised in 2000. The service of the petitioner was acknowledged by the Government by regularising it from 1st May, 2000. It took the Government 8 years after inspection to recognise the school and the service of the said writ petitioner. The writ petitioner could have reasonably and legitimately expected such recognition at a time contemporaneous to 29th September, 1992.

The argument on behalf of the appellant is that the decision in **Haradhan** (*supra*) does not relate to the relevant Scheme of 1981 cannot

make much difference as this issue has already been raised and decided against the appellant in **Nemai Ch. Chatterjee** (supra) and followed in **Postu Deb Singha v. State of West Bengal** reported in **2014 (4) CHN (Cal) 32** to which we have made reference in the earlier part of our order.

The principle that emanates from these decisions is that if the writ petitioner was initially appointed on a temporary basis but is allowed to continue without a break and, thereafter, his service is approved and he continues to work as such till the writ petitioner reaches the age of superannuation, then the past service of the writ petitioner is required to be reckoned only for the purpose of extending the benefit of 1981 Scheme in view of its beneficial nature. The delay caused by DLIT to carry out the inspection or the Education Department in granting the recognition should not stand in the way of extending such benefits once the school is recognised and the post is approved for the reasons we discussed above considering the present fact situation. The argument that the writ petitioner know at the time of his approval for the post that his service would fall short of 10 years reckoned from the date of such approval is not accepted since Rule 7(e)(iv) gives him a right to claim condonation of upto six months towards deficiency in qualifying service and this right is no way curtailed or affected by the approval for the post. Delay in making a claim should also not be fatal as no third party interest is affected. On the contrary the appellant as government authorities are required to act as a model employer and not to deny a legitimate claim.

In the instant case, it would be clearly evident that between the date of DLIT inspection and approval there is a gap of almost 1 year 4 months and the deficiency of qualifying service was only three months. Moreover, the Government circular dated 2nd February, 2009 read with para 7(e)(iii) of the West Bengal Recognised Non-Government Education Institution Employees (DCRB Scheme) 1981 permits condonation of six months. The said Government circular dated 2nd February, 2009 clearly specifies that the fraction of a year of three months and above shall be treated as completed six months period of service and reckoned as qualifying service for determining retiral benefits and the period of service less than three months will be ignored. We have in our judgment in **MAT 1917 of 2019 State of West Bengal vs. Rabindra Nath Ghosh** decided on **17th May, 2021** interpreted 7(e)(iii) along with Government circular dated 2nd February, 2009 to hold that the substantive clause in 7(e)(iii) and 7(e)(iv) shall apply.

It is, however, made clear that the period of deficiency is restricted to six months only as stipulated under para 7(e)(iv).

On both grounds we feel that the learned Single Judge was justified in allowing the writ petition.

Accordingly, the appeal fails.

The school authority under whom the petitioner discharged duty as an assistant teacher and the concerned authority shall take immediate steps within a period of two months from date in extending the benefits of pension to the petitioner upon due compliance of all the necessary formalities.

It is lamentable that the appellant has decided to prefer an appeal against the order of the learned Single Judge. The teacher has worked for almost 13 years and was found to be eligible for being appointed as a teacher would be denied pensionary benefits on such flimsy ground. The avowed object of the 1981 scheme which is undoubtedly a beneficial piece of legislation/scheme enacted/framed for the purpose of teachers and other employees covered by the said scheme not to be deprived of their past service is now being attempted to be rendered nugatory by taking recourse to harsh and irrational views in denying such legitimate claim. In our view it does not augur well with the appellants. The object of the said scheme would be defeated and rendered otiose if the interpretation given by the appellants are accepted to deny the benefits to the teachers whose service fall short of six months to qualify for pension.

The appeal and the application accordingly fail and dismissed without costs.

I agree

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)