

S/L 49
18.01.2021
Court No.26
SD

**WPA 8964 of 2020
(Via Video Conference)**

Md. Mainul Hoque
Vs.
State of West Bengal & Ors.

Md. Yamin Ali

...for the Petitioner.

*Mr. Pinaki Dhole
Mr. Rajat Dutta*

...for the State.

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the inaction on the part of the respondent authorities in considering his representation dated October 8, 2020 with regard to condoning the deficiency in the qualifying service of the petitioner for the purpose of grant of pensionary benefits.

The case of the petitioner is that the petitioner has been working since 1985 in the said organization and was ultimately granted approval and confirmed in 2012 (subsequent to order of this court).

Counsel appearing on behalf of the petitioner further submits that since his approval was granted belatedly due to no fault of his, the deficiency in his qualifying service should not be a bar for seeking pensionary benefits.

He relies on a decision in the case of *The State of West Bengal & Ors. vs. Kartick Chandra Das & Ors.* passed in *FMA 677 of 2015* to buttress his arguments.

Mr. Pinaki Dhole, counsel appearing on behalf of the State respondent, submits that petitioner did not make any objection at the relevant time when he was granted approval and, therefore, the question of condoning the deficiency of service for the purpose of grant of pension cannot be considered at this point of time. He further submits that since the petitioner has waived his right and also since the period of condonation is six months as per the rules, no exception can be made in the case of the petitioner.

I have heard counsel appearing on behalf of the parties and perused the materials on record.

In my view, the authority should pass a reasoned order after granting an opportunity of hearing to the petitioner.

In light of the same, the Commissioner, Directorate of School Education, being the respondent no.2 is directed to grant an opportunity of hearing to the petitioner and thereafter pass a reasoned order within a period of four weeks.

Respondent No.2 is directed to communicate the reasoned order to the petitioner within a period of one week from the date of passing of the same.

With these observations, WPA 8964 of 2020 is disposed of.

Since, no affidavit-in-opposition has been called for the allegations made in the writ petition are deemed to have not been admitted by the respondents.

There will be no order as to costs.

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.)