

S/L 3
09.09.2021
Court. No. 19
GB

WPA 1180 of 2021

Promath Chandra Roy
Vs.
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Debabrata Karan,
Ms. Sabita Khutia (Bhunya),
Mr. Debopriyo Karan..

...for the Petitioner.

Mr. Bikramaditya Ghosh.

...for the Respondent No.3.

Mr. Subir Kumar Saha.

...for the State.

This writ petition has been filed challenging an order dated September 11, 2015 passed by the Principal Secretary to the Government of West Bengal, Panchayat and Rural Development Department.

It is the contention of the petitioner that the order impugned was passed pursuant to a direction of this Court in a writ petition filed by the petitioner claiming condonation of 8 days in becoming eligible to pensionable service. The petitioner was engaged on a temporary basis in the office of the Executive Officer, Haldibari Panchayat Samity. Thereafter, the petitioner was absorbed pursuant to an order of this Court and joined permanent service under the said Panchayat Samity on February 9, 2000. The order of appointment of the petitioner as a Clerk-cum-typist at the Panchayat Samity was issued on February 7, 2000. The

petitioner retired from service on January 31, 2010. The petitioner prayed for pension. By a communication dated March 21, 2012, the petitioner was informed that he did not qualify for pensionable service, as he has not completed ten years. The petitioner, aggrieved by the decision of the authority, moved this Court under Article 226 of the Constitution of India.

The writ petition was disposed of by granting liberty to the petitioner to make a representation before the Principal Secretary to the Government of West Bengal, Panchayat and Rural Development Department with regard to the prayer for condonation of 8 days in order to make the petitioner eligible for pension. Accordingly the order impugned was passed. The order impugned does not consider the aspect of condonation of delay in terms of Clause 14 of the Death-cum-retirement Benefit Scheme, 1985.

Under Clause 14 of the Death-cum-retirement Benefit Scheme, 1985 for the employees of Panchayats, the competent authority has the power to condone the deficiency in service up to six months. The power of condonation is restricted to employees drawing not more than Rs.425/- per month at the time of retirement on invalid compensation or pension. Earlier the said amount was Rs.225/-. Admittedly, the petitioner has not been paid any invalid compensation or pension.

The authority without assigning any reasons has held that the petitioner was not entitled to pensionable service upon condonation of 8 days and concurrence of the finance department was needed.

The petitioner was appointed on a permanent basis against a substantive post on February 7, 2000. He joined the post on February 9, 2000. The petitioner retired on January 31, 2010. Thus, the shortfall in the service of the petitioner is by 8 days upon counting the date of his joining the office and the relevant date from which his service period should be computed. Before that the petitioner put in more than 9 years as a casual worker.

Pension is no longer to be a bounty to be handed out by the State at its whim. An employee has a right to receive pension upon retirement.

The contention of Mr. Ghosh, learned Advocate for the respondents that the claim of the petitioner is belated and not admissible in law is not accepted by the court. In view of the decision in Union of India Versus Tarmen Singh reported in (2008) 8 SCC 648 in spite of delay in approaching the court for payment of pension, the delay would not be fatal. The relevant ported is quoted below:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a

continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

There are several decisions of this Court in which such shortfall in service has been condoned for consideration of pensionable service.

Reference is made to the decision of this Court in the matters of Haradhan Mahato versus The State of West Bengal & Ors. reported in 2013 (3) CLJ (Cal) 523, Mir

kashem versus The State of West Bengal & Ors. reported in 2019 (2) CLJ (Cal) 355, Anantalal Mahata versus State of West Bengal & Ors. in WPST 379 of 2013, Union of India & Ors. versus Tarsem Singh, reported in (2008) 8 Supreme Court Cases 648.

In Haradhan Mahato (supra) this Court has held as follows:

“9. The respondent authorities, therefore, denied the benefits of usual pension and gratuity to the petitioner for not completing the prescribed usual period of 10 years, which, according to our calculation, comes to less than a period of three months. However, as we have already mentioned that the petitioner was appointed on 1st July, 1968 a seasonal Khalashi and discharged his regular duty in the concerned establishment, the said period should not be altogether ignored and should be taken into consideration to make up the short-fall in computing the service period for the purpose of granting benefit of usual pension and gratuity to the petitioner. in spite of serving the organisation since 1968 the benefit of pension should not be denied by the Government of West Bengal on the plea that the post in question was formally sanctioned afterwards and formal officer Order was issued at the fag end of the service career of the petitioner although, fact remains that the concerned establishment of the State of West Bengal enjoyed the service of the employee concerned, namely, the petitioner herein, for a period of almost 37 years (approximately). A poor employee like the petitioner, I therefore, cannot be denied the

benefit of usual pension and other retiral benefits in spite of serving the same establishment continuously for a period of more than 35 years on the plea that the office order relating to permanent absorption of the petitioner was issued at the fag end of the service career as a result whereof the said petitioner, did not complete 10 years service period after issuing the formal office order. From the copy of the letter of the Director of Personnel & Ex-officio Chief Engineer, I & W Directorate, Government of West Bengal, we find that after entry into the service the petitioner along with other seasonal employees repeatedly requested the concerned authorities to regularise their service by issuing appropriate office order which the concerned Authority did at a belated stage.

- 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 of 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 superannuation.*
13. *The respondent authorities are directed to grant the aforesaid pension to the petitioner without any further delay but positively within a period of six weeks from the date of communication of this order. The respondent Authorities are also directed to sanction entire admissible amount towards the arrear pension to the petitioner within the aforesaid period.”*

In *Mir kashem* (supra) this Court has held as follows:

“36. Therefore, in my opinion the impugned order dated 8th May, 2018 passed by the Principal Secretary of the West Bengal School Education Department cannot be sustained in the eye of law as well as the facts and circumstances of the case. Accordingly, the impugned order dated 3rd April, 2018 is hereby quashed and set aside.

37. Resultantly, the respondent authority is hereby directed to condone the deficiency of 76 days in the qualifying service of the petitioner and to disburse the pensionary benefit in favour of the petitioner along with all arrears pension within a period of Eight (8) weeks from the date of communication of this order and to carry on disbursing the monthly pension to the petitioner accordingly.”

In Anantalal Mahata (supra) this Court has held that even while computing pensionable services even the period when the employee had rendered service on either contractual basis or on temporary basis should be taken into account. The relevant portion is quoted below:

*“By two separate judgment delivered on 30.4.2014 in **WPST 532 of 2010 Nemai Chandra Chatterjee & Ors. vs. State of West Bengal & Others** and **WPST 31 of 2014 Pastu Deb Singha vs. State of West Bengal & Others** and other connected matters we have already decided this issue as to how qualifying service is to be calculated. We have held that under the DCRB Rules, the service rendered by an employee on a temporary basis continuously, prior to being conferred with the permanent status must be taken into consideration for computing the qualifying service for payment of pension. For the reasons stated in the aforesaid judgments these petitions are also allowed.*

However, where the Petitioners have not rendered qualifying service of ten years even after reckoning the period of service rendered by them as temporary employees, they would not be entitled to pension as a matter of right. In such cases the Government will apply Rule 36 of the DCRB Rules under which it is vested with the power to condone the deficiency in the qualifying service up to six months. An employee may also apply to the Governor of the State of West Bengal for the relaxation of the Rules under Rule 4 of the DCRB Rules.”

In this case, the petitioner undisputedly has rendered service from 1985 to 2010. The period between 1985 to February 7, 2000 was on temporary/casual basis without any interruption and from February 9, 2000 till January 31, 2010 was on permanent basis. The order impugned is nothing but a slipshod way of denying the legitimate claim for pension to an employee who has rendered sincere service.

Thus, the order impugned is set aside with a direction upon the respondent no.1 to reconsider the case of the petitioner in the light of the observations made hereinabove and pass an order condoning the delay in accordance with law. This Court does not find any reason as to why the shortfall of 7 to 8 days in the service of the petitioner cannot be condoned when the Government itself has floated a scheme in which power has been reserved to condone shortfall in service up to six months.

This Court would have otherwise condoned the delay of 7 to 8 days but for the requirement of a formal order from the authority to be issued in accordance with law. The Principal Secretary to the Government of West Bengal, Panchayat and Rural Development Department shall take into account the judgments referred to hereinabove and approach the matter with more humanity and seriousness and issue necessary orders directing and/or instructing the other authorities to complete the service book of the petitioner and release the pension.

It is expected that the authority shall rise to the action, behave like an ideal employer and take a decision as indicated by this Court within a period of eight weeks from date of communication of this order. The order shall be passed and communicated to all concerned including the petitioner and steps shall be taken accordingly by the authorities.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)