

WPO/437/2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SHYAMAL KUMAR KARMAKAR
VS
THE STATE OF WEST BENGAL AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 18th August, 2021.

Appearance:
Mr. Anjan Bhattacharya, Adv.
Ms. Anita Shaw, Adv.
...for petitioner.
Mr. Tapan Kumar Mukherjee, Adv.
Mr. Somenath Naskar, Adv.
...for respondents.

The Court : The petitioner was appointed to the post of Sahayak under Asharul Gram Panchayat by the order of the Pradhan dated October 11, 2002. The petitioner was sponsored by the District Employment Exchange, Bangaon, District 24 Parganas (N). The Block Development Officer, Bagdah, North 24 Parganas, issued a letter dated June 27, 2001 to the petitioner directing the petitioner to appear for a written examination schedule to be held on July 22, 2001 at 12.30 p.m. at Helencha High School, Helencha, District 24 Parganas (North). The petitioner was also requested to carry his documents, mark sheets in

original and passport size photographs. The interview was scheduled to be held on July 26, 2001 at 1 p.m. If the candidate secured pass mark in the written examination then the candidate would be called for an interview on July 26, 2001 at 1 p.m. The petitioner succeeded in the written examination and he was called for interview by Block Development Officer. Once the petitioner was successful in the interview, the Pradhan Asharul Gram Panchayat issued the order of appointment. All the original mark sheets of the petitioner was before the authorities when the petitioner was directed to appear at the written examination and then allowed to participate in the interview. The original documents were required to be placed before the authority before the commencement of the written examination. Thus this is not a case, where the petitioner got the job by suppression of his age. Not only the petitioner but three other candidates of other blocks have also been appointed in a similar manner to the post of Sahayak and have now been found ineligible to be granted pension and other retirement benefits, on the ground that at the time of appointment these persons were over-aged. The District Panchayat and Rural Development Officer 24 Parganas (North) by a communication dated March 25, 2021, requested the Commissioner Department of Panchayat and Rural Development, Government of West Bengal to condone the over-age of the petitioner along with three other persons at the point of entry to the service. The case was also recommended by the concerned Block Development Officer.

It is not in dispute that the petitioner worked from 2002 until his date of retirement on superannuation, that is, May 31, 2021. All these years no question

was raised with regard to the petitioner being over-aged at the time of entry to the service. Pension and gratuity are not given to the employee as a bounty or as a charity, by the employer. Pension is an entitlement of an employee who has discharged his duties diligently and with honour and respect. It is a reward. There is nothing on record to show that the service of the petitioner was deficient in any way. The petitioner did serve throughout his life. The authorities have utilized his service for more than 18 years 7 months. At the time of considering the disbursement of the retirement benefits, the employer/ the government machinery took a stand that the amounts could not be released as the petitioner was over-age at the time of entry to the service.

Be that as it may, the authority who can condone the over-age of the petitioner at the time of entry to the service, is the Commissioner, Government of West Bengal, Department of Panchayat and Rural Development. This Court is of the opinion that the writ petition should be disposed of with a direction upon the Commissioner Department Panchayat and Rural Development, Government of West Bengal, to take immediate steps with regard to the letter of the District Panchayat and Rural Development Officer, North 24 Parganas dated March 25, 2021, requesting the authority to condone the over age of the petitioner at the time of his entry to the service. From the said recommendation it appears that the only impediment towards non-payment of pension and other benefits to the petitioner is the fact that at the time of appointment the petitioner was over age. When the name of the petitioner, was sponsored by the Employment Exchange,

he was 39 years 2 months, but by the time the process was completed and the petitioner was given the appointment, the petitioner had crossed 41 years.

The Commissioner, Department of Panchayat and Rural Department is directed to give a hearing and pass a reasoned order. The order shall be communicated by the concerned authority. It is expected that the matter shall be viewed with the concern, seriousness and sensitivity it deserves as in this case the petitioner cannot be faulted. At the time of appointment his age was either overlooked or impliedly condoned. The Block Development Officer, Baduria and the Pradhan of Asharul Gram Panchayat shall also be called at the hearing. The entire exercise shall be completed within a period of four weeks from the date of communication of this order. The writ petition is disposed of.

Parties to act on the basis of the server copy of the order.

(SHAMPA SARKAR, J.)