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22.02.2022
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 1635 of 2020
(Via Video Conference)**

**Banshi Badan Gorai
-versus
State of West Bengal & Ors.**

**Mr. Dwarika Nath Mukherjee,
Mr. Sourav Mitra,
Mr. Pradip Kumar Ghosh.
...For the Petitioner.**

**Mr. Susanta Pal,
Mr. Ananda Dulal Sarkar.
...For the State.**

Affidavit-in-opposition filed by the respondent No.1 and the affidavit-in-reply filed by the petitioner in Court today are taken on record.

The order dated 16th December, 2019 issued by the Principal Secretary, School Education Department in compliance of the order passed by the Court on 11th September, 2019 in WP No. 17035 (W) of 2019 (Banshi Badan Gorai-vs- The State of West Bengal & Ors.) is impugned in the instant writ petition.

The prayer of the petitioner for allowing pension by condoning a shortfall of five months and seven days to complete ten years of pensionable service has been refused.

The first ground for refusal of extending the benefit of condonation is that paragraph 8 of the Death

Cum Retirement Benefit Scheme, 1981 prescribes at least ten years of service for being eligible to receive superannuation pension. The provision for condonation of deficiency in qualifying service for six months is allowed only in respect of the employees whose last pay is not more than Rs.425/- per month.

The second ground for rejection is that an appeal has been preferred by the State of West Bengal being MAT 621 of 2016 with CAN 3919 of 2016 and CAN 3920 of 2016 (State of West Bengal & Ors. –vs- Parikshit Mahato) which is pending adjudication as per the available office records.

The third ground for refusal is that the relief claimed by the petitioner in terms of the decision delivered by this Court in the matter of MAT 1609 of 2015 with CAN 4545 of 2017 and CAN 6131 of 2016 arising out of the judgment and order dated 12th March, 2015 passed in the matter of Bhabani Prasad De –vs- State of West Bengal & Ors. cannot be extended to the petitioner.

There is no provision in the DCRB Scheme to allow superannuation pension for rendering less than 10 years qualifying service.

Learned advocate for the petitioner submits that presently the issue as to whether the respondent can exercise jurisdiction to condone deficiency in the qualifying service period of an employee is no longer *res integra*. The same has been conclusively decided by the judgment delivered by the Hon'ble Division Bench of this Court on 28th May, 2021 in MAT 1917 of 2019 with IA No. CAN 2 of 2020 (The State of West Bengal –vs- Rabindra Nath Ghosh).

It has further been submitted that the appeal being MAT 927 of 2019 preferred by the State of West Bengal against the judgment passed by the learned Single Judge in the matter of Mir Kashem & Ors. (WP 14227 (W) of 2018) has since been dismissed as “not pressed” by an order dated 24th September, 2021 passed by the Hon’ble Division Bench. The appeal MAT 927 of 2019 being dismissed there ought not to be any impediment on the part of the State to condone the shortfall in the qualifying service period of the petitioner.

Reliance has also been placed upon an unreported decision passed by a coordinate Bench of this Court on 25th January, 2018 in WP No. 9903 (W) of 2016 (Gostha Bihari Guchhait -vs- The State of West Bengal & Ors.).

Learned advocate representing the State respondents submits that the Death Cum Retirement Benefit Scheme, 1981 does not permit condonation of qualifying service period in respect of each and every employee. The said benefit is restricted only in respect of the employees whose last pay drawn is not more than Rs.425/- per month.

It has further been submitted that according to the Scheme deficiency ought not to be condoned only with a view to make up the minimum qualifying service for the purpose of awarding pension. The relaxation clause is not general in nature and cannot be claimed as a matter of right. The Scheme has to be read in whole and not in parts.

Learned advocate appearing for the State respondents further submits that the petitioner did not raise any objection at the time of issuance of the letter of appointment as he was aware that he could not complete the qualifying period of ten years in service. At this stage, the petitioner cannot pray for leave to condone the shortfall in service. The same amounts to constructive *res judicata*.

I have heard and considered the rival submissions made on behalf of both the parties.

The grounds taken by the respondent authorities for rejecting the prayer of the petitioner are similar to the grounds adopted by the State in the appeal preferred by the State in MAT 1917 of 2019 (The State of West Bengal –vs- Rabindra Nath Ghosh). The Hon'ble Division Bench dealt with all the issues raised by the parties in details and after considering the submissions of the parties the Court passed judgment by holding that the object of the Scheme will be defeated and rendered nugatory by taking recourse to harsh and irrational views in denying the legitimate claim of the employee.

The Court was pleased to affirm the order passed by the learned Single Judge by allowing the writ petition upon condoning the deficiency of twenty-six days in the qualifying service of the teacher concerned.

Learned advocate appearing for the petitioner submits that the appeal referred to in the impugned order being MAT 621 of 2016 has already been disposed of by this Court in the year 2016 itself by remanding the writ petition back to the learned Trial Judge for rehearing the same upon exchange of

affidavits. The said writ petition being WP 10128 (W) of 2015 (Parikshit Mahato & Ors. –vs- The State of West Bengal & Ors.) stood disposed of by this Court on 21st August, 2018 wherein the Court was pleased to hold that the petitioner therein, that is Parikshit Mahato, was similarly situated and circumstanced as that of Rabindranath Ghosh and the Hon'ble Court was pleased to set aside the impugned order and further pleased to condone the deficit of five months and fifteen days for attaining qualifying 10 years' service for receiving the regular pension.

The Scheme of 1981 contains a provision for condoning deficiency of six months in qualifying service of the employees of non-government/sponsored/aided educational institutions/organisations. The Scheme mentions that fraction of a year equal to six months and above shall be treated as completed six monthly period for the purpose of calculation of pension under the Scheme.

In the present case the shortfall is of five months and seven days. The same being covered by the Scheme, the shortfall of the qualifying service period of the petitioner ought not to have been disallowed by the respondents.

In view of the law being settled by the Court in this regard, there is no other option left before the State respondents but to condone the shortfall of five months and seven days in calculating the pensionable service period of the petitioner.

Accordingly, the order impugned dated 16th December, 2019 is quashed and set aside.

The respondents are directed to condone the shortfall in the qualifying service period of the petitioner and thereafter to calculate the pension and release the same in his favour. Necessary steps shall be taken by the respondents at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

The petitioner is directed to forward a copy of the judgment delivered by the Hon'ble Division Bench of this Court in the matter of Rabindra Nath Ghosh (supra) and the order dated 24th September, 2021 passed by the Hon'ble Division Bench in MAT 927 of 2019 in the matter of Mir Kashem & Ors. (supra) and orders dated 21st August, 2018 in W.P No. 10128 (W) of 2015 (Parikshit Mahato & Ors. -vs- State of West Bengal & Ors.) and order dated 2nd May, 2016 in MAT 621 of 2016 (The State of West Bengal & Ors. -vs- Parikshit Mahato & Ors.) to the respondents at the time of communicating the order of the Court.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)