

**WPA 6085 of 2018**

**Sri Santosh Mukherjee  
Vs.  
The state of West Bengal & Ors.**

**Ms. Sanjukta Dutta  
Mr. Debanjan Das**  
**...for the petitioner**

**Mr. Suddhadev Adak**  
**...for the State**

Matter relates to condonation of deficiency in length of service of the petitioner for sanction of pensionary benefits in his favour. Petitioner was appointed as Nirman Sahayak on 2<sup>nd</sup> February, 2006 and subsequently, rendering service for a period of 9 years 8 months, retired on superannuation on 30<sup>th</sup> September, 2015. After superannuation, petitioner claimed pensionary benefit which was turned down by the Director of Pension Provident Fund and Group Insurance since the qualifying service of the petitioner is 9 years 7 months 29 days, i.e. less than 10 years.

Ms. Sanjukta Dutta, learned advocate representing the petitioner has submitted that the decision communicated by the District Panchayat and Rural Development Officer, Hooghly under memo dated 10<sup>th</sup> August, 2017 is not tenable, whereby claim of the petitioner for sanction of pension has been spurned, in view of memo dated 27<sup>th</sup> October, 2016 issued by the

Deputy Secretary to the Government of West Bengal, Panchayat and Rural Development Department wherein it has been admitted that the petitioner could not join the service of gram panchayat within the prescribed upper age limit due to delay caused by the administrative issues which were beyond his control. Taking cue from such memo dated 27<sup>th</sup> October, 2016 it has been argued on behalf of the petitioner that there is an admission on the part of the respondent authorities that the petitioner was appointed belatedly and had the petitioner been appointed in due time, there would not have been any question of condonation of deficiency in length of service to the extent of 4 months and he would have been adjudged as an eligible retiree to receive pension.

In addition thereto, it has been apprised by the learned advocate representing the petitioner that due to such delay caused in appointing the petitioner by the respondent authorities, he was appointed as Nirman Sahayak at the age of 50 years 4 months 18 days though at the material point of time, prescribed upper age limit for such appointment was 37 years. Considering this aspect the matter was taken into consideration and the Governor was pleased to condone the overage beyond the prescribed upper age limit of 37 years at the time of entry into service in respect of the petitioner. Therefore, there is no impediment in accepting the appointment of the petitioner at the age of 50 years 4 months 18 days. Such

act of condonation by the Governor relating to upper age limit in favour of the petitioner was indicated by the Deputy Secretary to the Government of West Bengal, Panchayat and Rural Development Department vide order dated 27<sup>th</sup> October, 2016. Accordingly, prayer has been made to issue necessary direction upon the concerned respondent authorities to sanction pension in favour of the petitioner upon condonation of deficiency in length of service to the extent of 4 months.

Mr. Suddhadev Adak, learned advocate is representing the State-respondents and has submitted that the issue of condonation of deficiency in length of service for the purpose of sanction of pension is pending before the Joint Secretary Panchayat and Rural Development Department and he has prayed for direction upon the said Joint Secretary for taking necessary decision in this regard.

This Court has heard the learned advocates representing the parties and perused relevant materials available on record.

Since the petitioner was appointed on 2<sup>nd</sup> February, 2006 as Nirman Sahayak and retired on 30<sup>th</sup> September, 2015 on superannuation, it is fact that there is deficiency of service to the extent of 4 months. As a result whereof, the Director of Pension Provident Fund and Group Insurance refused to sanction pension in favour of the petitioner as per the relevant rules. 10 years

continuous approved service is required for making retiree eligible to receive pension.

On analysis of the aforesaid facts relating to service of the petitioner, it appears that the petitioner was appointed at the age of 50 years 4 months 18 days as Nirman Sahayak on substantive basis, though fact remains, the upper age limit for new entrant into such service at that point of time was 37 years. Ultimately, on superannuation of the petitioner, the respondent authorities took up the issue for condonation of upper age limit on the premise that the petitioner could not join the service of gram panchayat within the prescribed upper age limit due to delay caused by administrative issues which were beyond his control as admitted by the Deputy Director in his order dated 27<sup>th</sup> October, 2016.

Ultimately, considering such departure made by the authorities while appointing the petitioner beyond the prescribed age limit and that was not attributable to the petitioner, the Governor condoned the restriction of upper age limit of 37 years in case of appointment of the petitioner which also emanates from the order of the Deputy Secretary dated 27<sup>th</sup> October, 2016. It is perceived that the Governor condoned the appointment of the petitioner beyond the age of 37 years taking into consideration that there was delay on the part of the administration in appointing the petitioner.

If appointment of the petitioner at the age of 50 years 4 months 18 days is accepted by the authorities on condonation of restrictions relating to upper age limit of 37 years which is applicable for a new entrant, this Court does not find any reason not to condone the deficiency in length of qualifying service to the extent of 4 months.

Moreover, the relevant rule which makes a retiree eligible to receive pension is a beneficial rule and that needs to be interpreted liberally.

In addition thereto, reliance has been placed on the judgement reported in **2016 (2) CHN (Cal) 494** of the Hon'ble Division Bench in the case of **State of West Bengal Vs. Aparesh Chandra Datta** .

Paragraphs 18, 19 & 20 of Aparesh Chandra Datta (supra) is quoted below:-

*“18. The concerned authority now by taking advantage of their own wrong cannot penalise the petitioner by refusing to grant pension to the petitioner on the ground of deficiency of two months and one day service of the petitioner.*

*19. We, thus, hold that this is a fit case where the deficiency of two months and one day of service of the petitioner should have been condoned by the concerned authority.*

*20. We condone the deficiency period of service of the petitioner and hold that he is entitled to get pension.”*

In view of aforesaid discussion and the ratio of the judgement of Aparesh Chandra Datta (supra), the impugned memo dated 10<sup>th</sup> August, 2017 issued by the District Panchayat and Rural Development Department Officer, Hooghly stands set aside and the concerned

respondent authorities are directed to process the pension case of the petitioner and release the pension in his favour within a period of 8 (eight) weeks from the date of communication of this order upon compliance of all necessary formalities.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

**(Saugata Bhattacharyya, J.)**