

21.03.2022
Item No.05
Crt. No.11.
KB

**MAT 1002 of 2021
with
IA No. CAN 2 of 2021**

**The Secretary, Public Service Commission, West Bengal
-Versus-
Smt. Archana Chatterjee & Ors.**

Mr. Pradip Kumar Roy
Mr. Joydeep Roy
... For the Appellant.

Mr. Bhabani Prasad Mondal
Mr. Sukanta Mondal
... For the writ petitioners/
Respondents.

Mr. Tapan Kumar Mukherjee
Mr. Pranab Kumar Halder
Mr. Somnath Naskar
... For the State-respondents.

Party/parties is/are represented in the order of
their name/names as printed above in the cause title.

Under challenge in this appeal is the order of the
Hon'ble Single Bench dated 9th April, 2021 in the writ
petition being W.P.A. 4287 of 2020.

The Hon'ble Single Bench, *inter alia*, relied upon
amended Rule 62 of the Death-cum-Retirement Benefit
(DCRB) Rules, 1971 of the State of West Bengal as
effected by the Memorandum No. 14971-F dated the 16th
of December, 1983.

Having regard to the combined effect of the 1971 Rules and the 1983 Memorandum (*supra*), the Hon'ble Single Bench accepted the prayer of the writ petitioners that the shortfall in the service of the appellant/writ petitioner of two months and nine days out of the minimum period of ten years is condonable as part of a fractional period of service which is entitled to be counted towards the whole of the qualifying minimum service.

Challenging the order of the appellant, the State Public Service Commission (PSC) submits through Mr. Roy, Learned Counsel, that the Hon'ble Single Bench did not notice the Memorandum No.201-F(Pen) dated the 25th February, 2009.

The specific attention of this Court is drawn to **Paragraph A(i)** of the said Memorandum dated the 25th February, 2009 as well as **Paragraph 2** thereof.

“A. Pension

- (i) *A Government employee retiring in accordance with the provisions of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and before completion of minimum qualifying service of ten year shall not be entitled to pension, but he shall continue to be entitled to gratuity.*
2. *The relevant rules in the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and West Bengal Services (Commutation of Pension)*

Rules, 1983 shall be deemed to have been amended to the extent indicated in these orders. Formal amendments to the said rules will be made in due course.”

It is the specific contention of the Learned Counsel for the appellant that the condonation of even a fractional service under the 1971 Rules read with the 1983 Memorandum (*supra*) have been done away with by the 2009 Memorandum (*supra*) and hence the writ petitioners/the Private Respondents are not entitled to receive pension.

Per contra, Mr. Mondal, Learned Counsel appearing for the writ petitioners/the Private Respondent submits that the 1983 Memorandum has still not lost its force

Having heard the parties and anxiously considering the provisions placed, this Court must pay particular attention to the language of **Paragraph A(i)** of the 2009 Memorandum.

To the mind of this Court, the employees, who are retiring under the provisions of 1971 DCRB Rules and before completion of minimum qualifying service of ten years, have not been expressly debarred from claiming the fractional computation of minimum eligible service as provided by Rule 62 of the 1971 Rules.

To the further mind of this Court although the minimum qualifying service of ten years is provided, the effect of Rule 62 flowing out of the 1971 *DCRB* Rules providing for condonation of the allowable fractionable service in favour of her employee has not been expressly taken away by **Paragraph A(i)** of the Memorandum of 2009.

In view of the purposive reading of **Rule A(i)** of the 2009 Memorandum, this Court finds no conflict *inter se* provision of Rule 62 of the 1971 Rules, 1983 Memorandum and the 2009 Memorandum.

To the considered mind of this Court, **Rule A(i)** of the 2009 Memorandum shall apply with full force only in the case of employees who are below the fractional level which could in no manner be condoned in terms of Rule 62 (*supra*), thereby applying **Rule A(i)** *stricto sensu* to such category of retirees.

For the above reasons, the order of the Hon'ble Single Bench dated 9th April, 2021 stands affirmed.

Since affidavits are not invited, all other allegations are deemed to be denied and disputed.

MAT 1002 of 2021 with **IA No. CAN 2 of 2021** stand thus **disposed of**.

All parties are to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)