

36 **18.08.**
2022
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 75 of 2022

Jagat Bandhu Biswas
Vs.
The State of West Bengal and others.

Mr. Malay Bhattacharya,
Mr. Subhrojyoti Ghosh.
... for the petitioner.

Mr. Tapan Kumar Mukherjee,
Ms. Debdooti Dutta.
... for the State.

A stale claim is sought to be resurrected by approaching the Tribunal and the Tribunal after noticing the facts from the pleadings and the documents annexed thereto rejected the said application.

It is a fundamental policy of this country that every litigation must reach to its finality and should not be kept pending on one score or other. Admittedly, the petitioner was selected in the year 1997 and undergone one year training at different centres between the period from 1st March 1997 to 30th November 1997. Ultimately, the petitioner was not appointed and after realizing that 96 candidates, whose names were appearing in the panel, where the name of the petitioner was also included, have been appointed, an approach was made to the Tribunal by filing an application being OA 6368 of 1998.

Obviously, one of the reasons for approaching the Tribunal was that the petitioner could not be discriminated and the moment the other persons have been appointed sparing the petitioner, the action of the

authority is against the ethos of the constitutional right.

The said tribunal application was filed by the petitioner along with other similarly circumstanced applicants and was alive for nearly 3 years in the docket of the Tribunal. It is only on 6th January 2001, the said application was permitted to be dismissed for non-prosecution on the request and/or submissions made by the applicants therein including the petitioner. Even there was a complete silence for nearly 7 years as it is admitted position that the petitioner was appointed to the post in the year 2008.

However, a plea was sought to be taken by the State respondents that since there was only 96 vacancies at the relevant point of time and 102 candidates were selected for such appointment, the rest candidates from serial no. 97 to 102 were appointed from time to time as and when the vacancy arose.

We do not delve to go into such aspect for the simple reason that the petitioner without raising any objection nor ventilating his grievance of delayed appointment joined the post and successfully served his tenure and attained superannuation in the year 2016. After attainment of superannuation and realizing that the petitioner could not fulfil the qualifying service for the purpose of getting the pension approached the Tribunal with a prayer that there is no fetter put to the authority in granting and/or relaxing the qualifying period reserved for entitlement to the pension.

The Tribunal rejected the said application solely on the ground of limitation as the cause of action arose when the petitioner joined the said post i.e. in the year 2008 and having not approached the Tribunal within the period provided therein, such application cannot be entertained.

The cause of action has not been defined in any

statute book. The definition of the cause of action received its sanction from different judicial pronouncement and there is no ambiguity as of the day that it is considered a bundle of facts pleaded by a party requiring the Court/Tribunal to adjudicate upon the reliefs claimed therein. The cause of action is required to be discerned from the pleadings and the facts emanate therefrom and not on a solitary day or a day as indicated therein. The cause of action should also be ascertained on the basis of the claim made before the adjudicatory authority on the disclosure of the facts upon which such relief was founded.

Indubitably, the petitioner was empanelled in the year 1997 but could not be appointed till 2008. In 1998, an approach was made to the Tribunal ventilating the grievance, but ultimately the petitioner abandoned such claim in deciding not to proceed with the said application. It is relevant to note that when the petitioner decided not to proceed with the application filed before the Tribunal in the year 2001, the appointment was not made in a close proximity of time but after a gap of 7 years therefrom. Even the petitioner did not raise any objection at the time of joining in the year 2008 when the appointment letter indicates the date from which such appointment would take effect. The objection ought to have been raised then and there if the authority was at fault in not appointing the petitioner with the other eligible candidates, but the petitioner chose to remain silent till attainment of superannuation.

It is sought to be projected that the claim of pension actually arose on superannuation and did not accrue prior thereto. There is no quarrel to the aforesaid proposition. The petitioner was aware at the time of joining the said post that he would not qualify the

length of service required for getting the pension. Since the appointment was accepted and the petitioner joined the post without any demur nor raised any objection, it is too late in a day to contend that the authority should consider the case for relaxation and/or extending the period of qualifying service for the purpose of pension. Withholding of the pension by an authority is one thing than the entitlement to receive the pension. In a former case, each default constitute a fresh cause of action, but in later case, such notion cannot be extended.

We do not intend to go further deep into such matter for the simple reason that apart from the aforesaid point, we find that the petitioner cannot succeed on merit as well.

The West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971 contains an exhaustive provision relating to diverse benefits attributable to the Government service and includes the pension and pensionary benefits. It admits no ambiguity that the qualifying service for getting the pension is 10 years and, admittedly, the petitioner fall short of 1½ or 2 years. Rule 37 thereof provides that the Government may condone the deficiency of 6 months in qualifying service of the Government servant upon any conditions that may be imposed. The moment the period has been provided therein beyond which the authority cannot exercise such power, it would be an idle formality to relegate the petitioner to the authority for consideration thereof.

Once the period is limited in the statutory rules beyond which the authority cannot exercise its discretionary power, such period is rigid and mandatory and in absence of any express provision for relaxation thereof, the authority cannot act in derogation therewith. The source of power emanates from the

aforesaid statutory Rule and the authority being the creature of the statute cannot travel beyond the peripheral of the provisions contained therein nor can act contrary to the provisions of the statute nor the Court can direct the authority to act in contravention with the statutory provisions.

We, thus, do not find that the appropriate Government enjoins any power to make deficiency of the qualifying service beyond 6 months and, therefore, the petitioner is not entitled to the same even on merit.

The writ petition is, thus, dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)