

15.02.2022
SL No. 4
Court No. 24
(P.M)

WPA 19064 of 2021

Pabitra Kumar Mistry
Vs
The State of West Bengal & Ors.
(Via Video Conference)

Mr. Saibal Acharya,
Mr. Subhendu Bikash Mukherjee,
Mr. Jagadish Chander Halder
... for the petitioner.

Mr. Tapan Kumar Mukherjee,
Ms. Tuli sinha
... for the State

The petitioner is a retired primary school teacher. He is aggrieved by the reasoned order dated 16th December, 2019 whereby he has been intimated that he will not be entitled to pension as there is a shortfall of eleven months and ten days in his qualifying service.

The petitioner submits that the selection process for recruitment of primary teachers was initiated in the year 2006 and the written examination was conducted in the year 2009. The appointment letter was ultimately issued in favour of the petitioner, upon intervention of the Court, on 1st December, 2010. The petitioner retired from service on attaining his normal age of superannuation on 31st December, 2019. There has been a shortfall in his qualifying service period of ten years.

It has been submitted that there has been no laches on the part of the petitioner. Had the appointment letter been issued in his favour in proper time, the issue of shortfall in qualifying service period would not have arisen at all.

The petitioner submits that the Hon'ble Division Bench of this Court in the matter of Subhas Chandra Chakraborty – vs – the State of West Bengal & Ors. reported in 2013(1) CHN (Cal) 438 paragraph 19 held that the appellant/petitioner could not join the service earlier due to the laches and/or lapse on the part of the respondent authorities in spite of being empanelled as a successful candidate. Due to the intervention of this Court, the appellant could join the service at a belated stage and the Court was pleased to condone the shortfall of only thirteen days, so that the petitioner became eligible for pension.

The learned advocate representing the State respondent submits that the selection process was initiated in the year 2006 but the same got entangled in various litigations. The delay that has been caused was not deliberate and the respondents ought not to be made responsible for the same.

Admittedly, it has been submitted by both the parties that the selection process got held up due to the several litigations challenging the same. The petitioner was ultimately issued the letter of

appointment on 1st December, 2010. The petitioner on the date of receipt of the letter of appointment came to know that he would not qualify for pension as the tenure to attain the qualifying service period was not left with him. During his entire service tenure the petitioner did not raise any objection with regard to the delay in issuance of the letter of appointment in his favour. He waited till attaining his normal age of superannuation and when his prayer for grant of pension stood rejected, he approached this Court praying for condoning the shortfall in his qualifying service tenure.

The delay which has been caused in issuing the letter of appointment was not because of laches on the part of the respondent authorities. Cause of delay is primarily the litigations that were filed challenging the selection process. The respondents ought not to be held responsible for the same. Accordingly, directing the respondents to pay pension to the petitioner even though there is a shortfall of more than eleven months in his qualifying service period will not be proper.

The judgment relied upon by the petitioner in the case of Subhas Chandra Chakraborty (*supra*) will not be applicable in the facts of the present case primarily because the shortfall in the case of Subhas Chandra Chakraborty (*supra*) was only thirteen days

whereas in the present case it is more than eleven months.

No provision of law has been shown before this Court according to which, the period of shortfall of more than six months in the qualifying service period can be condoned by the respondents.

In view of the above, no relief can be granted to the petitioners in the instant case. The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)