

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 259 of 2019

**Biplab Goswami
VS
The State of West Bengal & Ors.**

For the Petitioner

: Mr. Ujjal Ray,
: Mr. SK. Abdur Rahim,
: Ms. Manishikha Mondal.

For the State

: Mr. Arindam Chattopadhyay,
: Ms. Lipika Chatterjee.

Heard on: 24.01.2025

Judgment on: 24.01.2025

Rai Chattopadhyay, J. :-

1. The petitioner's grievance is with regard to non-consideration of his past service period and considering break in his service, allegedly illegally, by the concerned respondent authority.
2. Mr. Roy, learned advocate has represented the petitioner. He says that, from March 24, 2005 to March 23, 2006, the petitioner's appointment on lien in "Ghoramara Milan Bidyapith", was approved. In the meantime, on March 3, 2006, the petitioner was recommended for appointment by the West Bengal Regional School Service Commission, South Eastern Region, for the post of assistant teacher in Mathematics subject, in Honours graduate category, in "Bankimnagar

Adarsha Vidyapith”. That, since being recommended for appointment, the petitioner had to wait for the said school to issue the appointment letter, in order to join therein, as per the recommendation. Such appointment letter was issued to him by the school on March 30, 2006. The petitioner had joined in the said school immediately thereafter, that is on April 1, 2006. Mr. Roy would say that since after the date of the lien period having expired on March 23, 2006, and since after being recommended for appointment vide order dated March 3, 2006, there has been a gap of 7 days, for him to join in the school. He says that the reasons therefor would be attributable to the delay in issuance of the appointment letter by the school authority. The reason as above for the time gap to occur has been beyond control of the petitioner, he would submit.

3. To buttress his argument Mr. Roy would further refer to the government notification No. **85-Edn(S) dated January 28, 1981** [hereinafter referred to as “No. 85”] and the clarification in terms of government notification No. **136-Edn(B) dated May 15, 1985** [hereinafter referred to as “No. 136”] and say that break in service not exceeding twelve months would be automatically condoned and counted towards the actual service period of the petitioner unless the break in service was not caused due to dismissal or removal from service, as a measure of penalty. He says further that the school managing committee, vide its resolution dated October 6, 2018, has already condoned the period of break in the petitioner’s service, as mentioned above. Hence, according to Mr. Roy, in view of the notification as above the time gap during the petitioner having been recommended for appointment and the actual date of his joining, which is 7 days and much less than the stipulated time period of 12 months, would be automatically condoned and his past service period would be counted as to the total period of

service of the petitioner. According to Mr Roy, pursuant to the provisions of the notifications as above, the petitioner would not only be entitled to continuity of his service by automatic condonation of the 7 days gap, but also to be granted with the 18 years service benefit. Therefore, appropriate relief has been prayed for the petitioner, in this case.

4. Mr. Chattopadhyay, for the respondent State, would dispute the contentions and prayer of the writ petitioner, on the ground that the petitioner has not been able to bring on record any sufficient document as regards his date of joining in the later school that is, “Bankimnagar Adarsha Vidyapith”. He would say that the break in service of the petitioner would be for one and half months and not seven days, as claimed. He would seek that the writ petition be dismissed being devoid of any merit.
5. The petitioner’s service was approved temporarily on lien, from March 24, 2005 to March 23, 2006. Later on the petitioner was appointed in the school “Bankimnagar Adarsha Vidyapith”, upon recommendation of the School Service Commission, with effect from April 1, 2006. Hence admittedly there has been a gap of 7 days in between, which the respondents treat to be a break in service of the petitioner, leading to deprivation of the benefit of continuity of service to him.
6. Dispute has been raised as regards the date of joining of the petitioner in the school “Bankimnagar Adarsha Vidyapith”. The Court finds however, in view of the letter of approval dated June 5, 2006, that there would not be scope of any doubt regarding the date of appointment of the petitioner in the school “Bankimnagar Adarsha Vidyapith”, wherein the said date has been mentioned as April 1, 2006. Therefore the respondent’s own document has suggested regarding date of joining of the

petitioner to be on April 1, 2006. Also that there is no dispute about his temporary service period on lien having expired on March 23, 2003. Hence the court does not find any impediment in accepting the submission of the petitioner that there has been a gap of seven days, for him to join in the school “Bankimnagar Adarsha Vidyapith”.

7. Be that as it may, the issue here relates with if the time gap or the period of break of the petitioner, would be counted in order to wipe out his past service, from the total period of his service. In this respect, one has to look into the provisions in notification. No. 85, which may be quoted here for benefit of discussion.

“For Condonation of Break of Service for 12 months

The undersigned is directed to say that in terms of this Department’s Order No.1535-(S) dated the 3rd August, 1972 condonation for a break-in-service not exceeding 12 months, occurring after the promulgation of the aforesaid Rules, is not necessary and that service prior to such a break shall automatically count towards pension. A question has now arisen whether condonation for such a break not exceeding 12 months before the promulgation of the said Rules, is necessary or not.

2. *After careful consideration, the Governor is pleased to decide that where a break in service not exceeding twelve months occur prior to promulgation of the aforesaid Rules, condonation for such break automatically count towards pension, provided that the break in service was not caused by dismissal or removal from service, as a measure of penalty.*

3. *This order issues with the concurrence of the Finance Department vide their U.O. No.Group B/27/67 dated the 22nd January, 1981.*

4. The Account General, West Bengal and the Pay and Accounts Officer, Calcutta pay and Accounts Office have been informed.”

8. The provision under the notification No. 136 would also be relevant in this regard. The same has been relied on by the petitioner, to submit that break in service not exceeding twelve months would be treated as automatically condoned and past service shall be counted as qualifying service.
9. Therefore, the notifications as mentioned above would show that break in service not exceeding 12 months period should be treated as automatically condoned, and in that case, past service of a teacher should be counted as qualifying service. There is, of course, a rider existing as to the provision as above, that is, the break of service should not be on account of dismissal or removal from service as a measure of penalty, that is, pursuant to any disciplinary action. The petitioner's case does not fall within the said category. Record reveals that the petitioner after being recommended for appointment on March 3, 2006, was given appointment letter by the school on March 30, 2006. Whereas, at the time of recommendation on March 3, 2006, his service with the erstwhile school on lien, was continuing, on the date of issuance of appointment letter, the service of the petitioner with the said previous school came to be ended, with effect from March 23, 2006.
10. Upon consideration of the background facts of the present case as well as the rules as prevalent, the Court is of considered view that the petitioner would be governed under the clauses in the notifications No. 85 and 136, as mentioned above. That the time gap or break of service of the petitioner being for 7 days and much less than the time stipulated of 12 months period—

such time gap or break of service of the petitioner should be eligible for automatic condoning by the respondent authorities and the past service of him should be counted as qualifying service of him.

11. Hence, the present writ petition is allowed, with the following directions:

- (i) the petitioner's break in service for 7 days, shall be condoned;
- (ii) the past service period of the petitioner shall be treated as the qualifying service of him, for the purpose of granting service benefits including pension to the petitioner;
- (iii) necessary orders in this regard shall be passed by the respondent No.5/District Inspector of Schools (Secondary Education) Nadia, within a period of 4 weeks from the date of communication of copy of this judgment.

12. Writ petition No. 259 of 2019 is disposed of.

13. Since no affidavit is invited, the allegations contained in the writ petition are deemed to have been denied.

14. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)