

10.08.2023
Item No.19
Ct. No.5
CHC

WP.ST 14 of 2017

**The State of West Bengal & ors.
Vs.
Mir Liakat Ali & anr.**

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
...for the State/writ petitioners

Mr. Partha Sarathi Bhattacharyya, Sr. Advocate
Kaji Sajjad Alam,
Mr. Raju Bhattacharyya
...for the respondent

The writ petition is directed against an order dated September 21, 2015 passed by the West Bengal Administrative Tribunal in O.A.309 of 2014.

State is writ petitioners herein.

State is aggrieved by the impugned order.

By the impugned order, the Tribunal directed that the seniority of the private respondent was to be counted with effect from February 21, 2004.

The private respondent was initially engaged as Tahasil Moharrier. In a slew of litigation, the fate of Tahasil Moharrier came up for consideration. A scheme for absorption was formulated. Tahasil Moharriers were absorbed from time to time. Cabinet approval for such approval in the present case is of 2006.

Private respondent applied for fixation of his seniority in terms of Rule 5 of the Finance

Department's Order No.1882-F dated March 11, 1981 (Determination of seniority) Rules, 1981. Seniority as prayed for was denied to the private respondent. Aggrieved, the private respondent approached the Tribunal by way of O.A.958 of 2000. Such application was disposed of on February 26, 2002 with a direction upon the respondent to consider the case of the applicants in terms of the Government circular for their absorption in the desired post.

The private respondent was appointed as Night Guard with effect from March 27, 2008. Private respondent seeks seniority from February 21, 2004. Private respondent, as noted above, was appointed only on March 27, 2008. Therefore, granting seniority to the private respondent with effect from February 21, 2004 can be considered only if the private respondent is in a position to establish that he was denied the rightful appointment by reason of inaction or non-action or wrong on the part of the respondent authorities.

In the facts of the present case, no such material is placed on record.

Period of service of Tahasil Moharrier, prior to the date of their absorption cannot be taken into consideration for the purpose of calculating pensionary benefit payable to them.

Private respondent superannuated in 2015. Private respondent did not serve for the qualifying period of service required, for payment of pensionary benefit.

Essentially, the private respondent seeks pensionary benefit taking into consideration a period of service when the private respondent admittedly was not emgaged by the State Government.

In such circumstances, we set aside the impugned order of the Tribunal dated September 21, 2015.

WP.ST 14 of 2017 is allowed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)