

19.07.2023
Item No.14
Ct. No.5
CHC
(dismissed)

WP.ST 261 of 2011
IA NO: CAN/4/2023
Mritunjoy Jana (since deceased), his legal heirs
and representatives Swarnalata Jana & ors.
Vs.
State of West Bengal & ors.

Mr. Kamalesh Bhattacharya
...for the petitioners

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mr. Manas Kumar Sadhu
...for the State

The writ petition is directed against an order dated February 21, 2011, by which, the Tribunal negated the claim of pensionary benefits to the writ petitioners on the ground that they did not meet the qualifying service and that they did not contribute to the contributory provident fund.

The writ petitioners were Tahisilder Mohurrior up to 1984. Since 1984, the Tahosil Mohurrior was abolished. Nature of work of a Tahosil Mohurrior was seasonal.

The Government floated a scheme dated October 15, 1998 for the absorption of Tahosil Mohurrior in regular establishment against available vacancies in Group-D post in phases. The relevant portion of such scheme are as follows:-

2.“(ii) After ascertaining the genuineness of the claim of the incumbents for absorption, a list of eligible candidates should be prepared with particular reference to their date of appointment, length of service, continuity in service etc. i.e. length of service should be the basic criterion and the names of candidates to be arranged in accordance with the date of engagement read with order dated 29.9.93 of His Lordship Mr. Justice Gitesh Ranjan Bhattacharyya in Civil Rule No.7592(W) of 1991.

(iii) Provisions laid down in Labour Department's Circular No.1700-EMP dated 3.8.79, which were operative at the material time, shall also be taken into account.

(iv) A reasoned order should be passed in all individual in all individual cases where the District Land and Land Reforms Officer concerned, decides against absorption of incumbents on account of their ineligibility to avert unnecessary litigation.

(v) No 'Group-D' post shall be filled up from outside, except in ("die-in-harness" or similar nature) "Exempted Category" cases, till all eligible Tahsil Mohurriors are absorbed, subject to availability of vacancies in Group 'D' posts.

(vi) While implementing the decision of absorption of Tahasil Mohurriors excess age of the

incumbents, if any, may be condoned by the concerned authority under the relevant rules of the Government and/or as directed by the Hon'ble High Court.

(vii) Seniority of the incumbents shall be determined in accordance with the determination of Seniority Rules 1981. Past services rendered by them elsewhere in any capacity prior to absorption shall not be taken into account under any circumstances.”

Petitioners were absorbed to the post of Group-D staff in terms of the scheme dated October 15, 1998 from 2007 onwards.

Petitioner contends that persons who were junior to them were absorbed prior to the petitioners being absorbed.

Absorption was phase-wise and district wise. The petitioners did not complain of such irregular absorption if there be any at the material point of time. The petitioners worked for different period of time till their superannuation.

On superannuation, petitioners approached the Tribunal for the purpose to pensionary benefits.

Petitioners admittedly do not qualify on the strength of their length of service as Group-D staff to receive pensionary benefits. That apart, petitioners did not contribute to the contributory provident fund.

Past service of the petitioners as Tahosil Mohurrior cannot be considered for the purpose of qualifying service for a Group-D staff, firstly on the ground that nature of job of Tahosil Mohurrior was seasonal. Secondly, there was a break in service between 1984 till 2007 for all the petitioners. Thirdly, the scheme under which, the petitioners were appointed specifically provides that past service rendered by the petitioners elsewhere in any capacity prior to the absorption shall not be taken into account under any circumstances.

Petitioners cannot be allowed to resile from a declared scheme, after taking benefit thereunder.

In such circumstances, we find no merit in the present writ petition.

WP.ST 261 of 2011 along with connected application are dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)