

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

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 132 of 2023

Smt. Kalpana Horh
VS.
The State of West Bengal & Ors.

For the Petitioner : Mr. Avijit Sarkar, Advocate

Heard & Judgement on: September 19, 2023

DEBANGSU BASAK, J.

1. The writ petition is directed against the order dated May 18, 2023 passed by the West Bengal Administrative Tribunal in OA 563 of 2019.
2. By the impugned order, the Tribunal negated the claim of the writ petitioner to consider the writ petitioner having put in qualifying period of service to receive pensionary benefits.
3. Learned advocate appearing for the writ petitioner submits that the writ petitioner was appointed by a letter dated March 1, 2006. He points out that, the writ petitioner was entitled to be absorbed to a Group-'D' post. He refers to order dated April 5, 2004 passed by the Tribunal in OA

92 of 2004 holding that the writ petitioner was eligible for absorption. He contends that, in the event, the authorities had appointed the writ petitioner within a short period of time from April 5, 2004, being the date of the order of the Tribunal which finds the writ petitioner to be entitled to absorption, then, there would be qualifying service so far as the writ petitioner is concerned to receive the pensionary benefits.

4. Learned advocate for the writ petitioner relies upon two unreported decisions of two co-ordinate Benches of this Hon'ble Court, one being judgment and order dated **March 8, 2016** passed in **MAT 1607 of 2015** [**State of West Bengal & Ors. vs. Aparesh Chandra Datta & Ors.**] and the other being order dated **April 11, 2012** passed in **MAT 1211 of 2019** [**State of West Bengal & Ors. vs. Sumohan Mondal & Ors.**]. He submits that, the shortfall in qualifying service is about 1 year 23 days. In the event past service of the writ petitioner is considered or in the event the time period taken to give the appointment is calculated, then, the writ petitioner is with requisite qualifying service to receive the pensionary benefits.

5. Writ petitioner was initially appointed on temporary basis to the post of Peon on January 1, 1984 at the Midnapore Homeopathic Medical College and Hospital. Case of the writ petitioner for absorption was considered by the authorities. In fact, the writ petitioner approached the Tribunal for absorption by way of OA 92 of 2004. There is an order dated April 5, 2004 passed by the Tribunal directing the Director of Homeopathy to consider the application of the writ petitioner as a representation and consider her case for appointment by absorption in any post including Group-D post as per relevant Government circulars.

6. Subsequent thereto, the State by an order dated March 1, 2006 granted the writ petitioner appointment to a Group-D post. The terms and conditions with regard to the appointment were, *inter alia*, past services will not be counted towards seniority. The order dated March 1, 2006 also notes the orders passed by the Tribunal and the decision of the Cabinet with regard thereto.

7. It appears from the records made available to Court that, the writ petitioner always insisted that she be absorbed to the post of Group-C and that she went to the Tribunal with such a case. Ultimately, the Tribunal by the order dated April 5, 2004 held that, the writ petitioner was eligible for absorption and that she insisted for appointment only in Group-C post. Her case was not considered. Before the Tribunal, the writ petitioner then requested the authorities to reconsider her application for absorption. It is thereafter that, the order dated March 1, 2006 was passed.

8. The writ petitioner worked in terms of the appointment dated March 1, 2006. She did not complain at any relevant point of time that, her past services were not taken into consideration for her seniority. She knew that she was without the qualifying service for receiving pensionary benefits when she took the appointment in terms of the writing dated March 1, 2006.

9. **Aparesh Chandra Datta** (*supra*), the High Court found that, there was an order passed by the learned single Judge directing the incumbents to be appointed within a period of three months from the date of the order. The time limit fixed for giving appointment expired on June 12, 1991. In such factual context, the direction issued by the co-ordinate Bench for taking into consideration the period of service which the incumbents there were denied by reason of the non-action of the State.

10. In the facts of the present case, the order dated April 5, 2004 merely directed reconsideration of a request of the writ petitioner for absorption in the teeth of the writ petitioner insisting on absorption to the Group-C post.

11. In ***Sumohan Mondal*** (*supra*), again, the co-ordinate Bench found that the delay was attributable to the conduct of the authorities and that the appointments were not granted promptly.

12. The factual scenario in the present case is different as noted above.

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

14. WP.ST 132 of 2023 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

15. I Agree.

(Md. Shabbar Rashidi, J.)