

S/L 88
22.06.2023
Court. No. 29
Sourav

WPA 10896 of 2020
With
CAN 1 of 2022
(Application is not in the file)

Sri Sachidulal Dana
Vs.
The State of West Bengal & Ors.

Mr. Malay Bhattacharyya
Mr. Subhrajyoti Ghosh

...for the petitioner.

Mr. Samiran Mandal
Mr. Abhinaba Dan
Mr. Nitish Samanta

...for the Bankura Municipality.

1. Learned advocate for the writ petitioner and learned advocate for the respondent nos. 4, 5 and 6 are represented by their respective learned advocates.
2. None appears on behalf of the respondent nos. 1 and 2/the State of West Bengal.
3. The instant writ petition is now taken up for hearing.
4. In support of the instant writ petition, the learned advocate for the writ petitioner at the very outset draws attention of this Court to the Annexure P-1 to the writ petition wherefrom it reveals that the present writ petitioner was appointed as a temporary employee in Bankura Municipality with effect from 01.02.2002. Drawing attention to Annexure P-4 of the writ petition, it is submitted on behalf of the writ petitioner that the writ petitioner's service was regularized in the municipal

service with effect from 30.12.2008 and he retired on 30.11.2018 on his superannuation.

5. It is submitted further that on behalf of the respondent nos. 4, 5 and 6, a letter dated 24.06.2019 was sent to the respondent no. 2 requesting him to condone the length of service (only for 28 days) for entitlement of his pension since he was in municipal service for 9 years and 11 months. In the said letter addressed to the respondent no. 2, it was categorically mentioned that the present petitioner served the municipality as a temporary/casual worker for a period of 7 years i.e. from 24.07.2001 to 29.12.2008.
6. Even after issuance of this letter, no positive response was obtained from the respondent nos. 1 and 2/State authorities. It is, however, pertinent to mention herein that under cover its letter dated 03.05.2018 which has been marked as Annexure P-3 to the writ petition, the respondent no. 3 has declined to condone the delay of 28 days so far as the claim of the writ petitioner with regard to his admissibility of pension, which is why the writ petitioner has approached this Court for appropriate relief i.e. for a writ of mandamus directing the respondent authorities to release pension in his favour.
7. In course of his submission, learned advocate for the writ petitioner draws attention of this Court to the Rule IV of Chapter III of the West Bengal Municipal (Employee's Death-cum-Retirement Benefits) Rule, 2003. Attention of this Court is drawn to an unreported decision of this

Hon'ble Court dated July 20, 2016 as passed in WPST 127 of 2016. It is contended on behalf of the writ petitioner that on conjoint perusal of Rule IV, Chapter III of the aforesaid Rule and the decision of the Hon'ble Division Bench as passed in the aforementioned case, it would reveal that for ascertaining qualifying service for pension continuous temporary or officiating service of a whole time employee shall have to be counted as qualifying service.

8. It is thus contended on behalf of the writ petitioner that the respondent/State authorities have erred in law in not counting the period of service (7 years) of the present writ petitioner as a casual worker of the aforementioned municipality. Learned advocate for the writ petitioner thus submits that it is a fit case for allowing the instant writ petition.
9. Learned advocate for the respondent no. 4 to 6/municipality in his usual fairness leaves the matter for the consideration of this Court. It is further submitted by him that the 'No Objection' of the respondent nos. 4 to 6 in disbursing admissible pension to the writ petitioner would reveal from Annexure P-4 of the writ petition.
10. For effective adjudication of the instant *lis*, a look to the provision of Rule IV of Chapter III of aforesaid Rules is necessary and the same is reproduced hereinbelow in verbatim:

***“4. Qualifying service for pension shall
be as follows:-***

(i) ***Continuous temporary or officiating service of a whole time employee will count as qualifying service. The period of service rendered before attaining the age of 18 years will not qualify.***

(ii)

(iii)

(iv)

(v)

(vi)

(vii)”

11. At this juncture, I also propose to look to the relevant portion of the unreported decision dated 20.07.2016 as passed in WPST 127 of 2016 where the Hon’ble Division Bench expresses the following view:

“There is no dispute that the petitioner had rendered temporary service on and from 1st June, 1980 till the date of his permanent appointment on 5th December, 1996 and in the letter of permanent appointment dated 27th November, 1996 it was stated that the seniority of the petitioner would be fixed later on after due consideration of the seniority of the existing work charge staff of the circle. The respondent no. 2 himself recommended the petitioner’s claim for counting such past service rendered by the petitioner as qualifying service for calculation of pensionary benefits but the petitioner’s prayer for counting such past service as qualifying service for the purpose of calculation of pensionary benefits was rejected by a cryptic order dated 23rd June, 2008

issued by the joint Secretary to the Government of West Bengal.

The issue as regards condonation of shortfall in qualifying service of an employee upon taking into consideration the temporary service rendered by the said employee prior to permanent service is no longer res integra and the said issue has already been decided by the Division Bench of this Court in the case of Nema Ch. Chatterjee & Others (supra). In the said judgment, upon considering Rules 4, 17, 18, 22 and 36 of the West Bengal Services (Death-Cum-Retirement benefits) Rules, 1971, it has been categorically observed that temporary or officiating service under government should be reckoned for determining the qualifying service for the purpose of pensionary benefits. This Court is informed that the State Government preferred a Special Leave Petition against the said judgment and the same was also dismissed.

It is well settled that in case of pension the cause of action actually continues from month to month and that as such the delay in filing the petition should not be held to be a bar towards grant of an equitable relief since pension is granted by the government to its employees as a social security measure.”

12. On conjoint perusal of the aforesaid legislative enactment and the decision of the Hon'ble Division Bench as passed in the case of **Pran Chandra Chatterjee**

(Supra) this Court is of considered view that respondent nos. 2 and 3 ought to have considered the period of casual service of the present petitioner i.e. from 24.07.2001 to 29.12.2008 together with his tenure of service in respondent no. 4 municipality i.e. from 31.12.2008 to 30.11.2018. In further considered view of this Court there cannot be any justification to exclude the continuous temporary period (24.07.2001 to 29.12.2008) of the present writ petitioner in assessing the qualifying service for pension within the meaning of Chapter III, Rule IV of the said Rules.

13. For the reasons discussed above, it is hereby directed that both the respondent nos. 2 and 3 shall condone the shortfall of service as mentioned in the respondent no. 3's memo no. K/RVJ/M/00191/18/DPPG/MIN/*BNK-0006/2018 dated 03.05.2018 with a further direction to the respondent nos. 2 and 3 to disburse the admissible pensionary benefits to the present petitioner treating him in permanent service for a period of ten years.
14. It is further directed that the respondent no. 3 shall disburse the pension including the arrears pension, if therebe any, together with prevailing bank interest upon the arrears pension as discussed hereinabove within three months from the date of communication of this order.
15. With the aforementioned observation, the instant writ petition being **WPA 10896 of 2020** is thus allowed and disposed of.

16. All parties to act on the server copy of this order duly downloaded from the official website of this Court.
17. All the interim applications stand disposed of.
18. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)