

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate side

PRESENT:

HON'BLE JUSTICE MADHURESH PRASAD
AND
HON'BLE JUSTICE SUPRATIM BHATTACHARYA

W.P.S.T. 20 OF 2024

Tapan Kumar Mondal
vs.
The State of West Bengal & Ors.

For the Petitioner : **Mr. Anjan Bhattacharya, Adv.**
Ms. Anita Shaw, Adv.

For the Respondents : **Mr. Tapan Kumar Mukherjee, Sr. Adv.**
Ms. Ashmita Ghosh, Adv.

Heard on : **06.11.2024, 20.11.2024 & 25.11.2024**

Judgment on : **02.12.2024.**

MADHURESH PRASAD, J.:-

1. The petitioner was the applicant before the West Bengal Administrative Tribunal (Tribunal for short). He retired from service as a Work Assistant under the Public Works Department on 31.08.2021. He has served the Government for nine years eight months and twenty days.

There was thus a short-fall of three months and ten days in the requisite qualifying service for the purposes of grant of benefit of pension. The petitioner sought relaxation of the qualifying service in terms of Rule 36 of the West Bengal Services (Death cum Retirement Benefit) Rules, 1971 (hereinafter referred to as the DCRB Rules). The same was disallowed on 14.07.2023 by a reasoned order passed by the Chief Engineer (Head Quarter) in terms of an earlier order passed in O.A. 667 of 2022. It is this order passed by the Chief Engineer which was the subject matter of consideration before the Tribunal in O.A. No. 613 of 2023 filed by the petitioner. The Tribunal taking note of the fact that the matter has been considered by the Chief Engineer and a reasoned order has been passed thereupon in consultation with the competent authority being the Finance Department, refused to interfere with the reasoned order. The Original Application has been disposed of thus without passing any order.

2. The learned Counsel for the petitioner submits that the Tribunal has misdirected itself by relying upon the order passed by the Chief Engineer in consultation with the Finance Department. The power of the Government to condone deficiency in service is specified in Rule 36 of the DCRB Rules. Since the petitioner has placed reliance on this Rule we propose to reproduce the same herein, which reads as follows:

“36. Power of Government to condone deficiency

in service – Upon any condition which it may think fit to impose, Government may condone a deficiency of six months in the qualifying service of a Government servant.

Note – The deficiency should not be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity or family pension. In other cases power should be restricted to Government servant drawing pay not exceeding Rs.425/- per month at the time of retirement on invalid or compensation pension.”

3. Referring to the provision, it is submitted that the Rule contemplates condoning the deficiency in qualifying service of a Government servant up to six months. The exceptions are contained in the note below the Rule. The petitioner’s case does not come within any of the exceptions curbed out in the note below of the Rule 36 of DCRB Rules and therefore, the decision of the Chief Engineer, as affirmed by the Tribunal is unsustainable.
4. The petitioner’s case is neither a claim for compensation pension, nor invalid pension. It is a claim for a pension simpliciter and therefore the note appended below Rule 36 will have no application in the case of the

petitioner. It is submitted that rejection of a claim under similar circumstance of one **Uday Kumar Pore** was considered by this Court in the writ proceeding arising out of **W.P.S.T. 125 of 2022**. The coordinate Bench of this Court has set aside such consideration leading to rejection of his claim. The learned Counsel for the petitioner has also relied on the case of one **Asoke Bhakat**. It is submitted that the said **Asoke Bhakat** had moved this Court under similar circumstances by filing a Writ Petition bearing **W.P.S.T. No. 37 of 2022**. The deficiency in his case was condoned by a direction of a coordinate Bench of this Court in his favour. The Court has directed that the petitioner shall be treated as having completed the qualifying service under the scheme and be paid all admissible consequential benefits. It is submitted that the petitioner's claim is also fit to be allowed in terms of the said Judgment.

5. Mr. Mukherjee, for the State submits that the coordinate Bench in the case of **Uday Kumar Pore** after setting aside the rejection of condonation of qualifying service has left it for the authorities to decide the petitioner's claim therein. He has further submitted that relaxation under the Rule is not mandatory. From a plain reading of Rule 36, it is obvious that at best it gives a discretion to the Government to condone the requirement of qualifying service for the purposes of grant of pension to the extent specified therein (six months). He has also referred to Rule 3A of the West Bengal Service Rules to submit that in

terms of the said Rule relaxation/s are exclusively within the inherent power of the Governor which is obvious from a bare perusal of Rule 3A. It is, therefore submitted that the Chief Engineer has rightly rejected the claim for any relaxation/condonation in the qualifying service.

6. We have heard the learned Counsel for the parties. Considered the two rules being relied upon as well as the two decisions of the coordinate Bench, taken note of above. A bare perusal of Rule 36, extracted above, makes it clear that the discretion to condone a deficiency of six months in qualifying service of a Government servant for grant of pension is limited by the note below the Rule, if the deficiency arises in the qualifying service for the purposes of death gratuity or family pension. In other cases of retirement on invalid or compensation pension also there is a limit specified by the note below Rule 36. The note below Rule 36, therefore has no application in the case of the petitioner who is seeking relaxation/condonation in the qualifying service for the purposes of grant of superannuation pension or pension simpliciter. The relaxation being sought for is well within the six months' limitation as specified in Rule 36, as he has a deficiency of only three months and ten days. The note below Rule 36 therefore does not come in the way of condonation of deficiency in service in the case of the petitioner.
7. Insofar as Rule 3A of the West Bengal Service Rules is concerned, we consider it apposite to reproduce the same herein, which reads as follows:

*“3A. Nothing in **these rules** shall be Construed to limit or abridge the power of the Governor to dispense with or relax the requirement of any of **these rules** to such extent and subject to such conditions as he may consider necessary for dealing with a case in a just and equitable manner.”*

8. A bare perusal of the Rule makes it abundantly clear that the same is in fact saving the inherent power of the Governor to dispense with or relax the requirement of any of “*these rules*”. Even the opening line of Rule 3A starts with the expression “*Nothing in these rules*”. Rule 3A when read keeping in background that it is part of the West Bengal Service Rules, makes it abundantly clear that the same is applicable to save the inherent power of the Governor to dispense with or relax the requirement of any of the Rules contained in the West Bengal Service Rules. We, therefore, do not consider it applicable to the claim of the petitioner arising under the DCRB Rules.
9. In our considered opinion Rule 36 of the DCRB Rules covers the claim of the petitioner. The power of condonation having been granted under the Rule 36 and since petitioner’s claim is for condoning the short-fall in the superannuation pension only we do not find any limitation being specified by the note below Rule 36 for grant of condonation to the petitioner.

10. We are of the considered opinion that the petitioner's case is covered by the decision in the case of ***Asoke Bhakat Vs. The State of West Bengal & Ors.***, on which the petitioner's learned Counsel has placed reliance.
11. We, therefore, set aside the order of the Tribunal as well as the Chief Engineer (Head Quarter), insofar as it has rejected the claim of the writ petitioner, we find that the power under Rule 36 to condone the deficiency or relax the requirement of qualifying service for superannuation pension is with a rider that the same may be upon any condition which the Government may think fit to impose. What condition the Government will think fit to impose for grant of such relaxation/condonation, therefore lies in the discretion of the State Government.
12. Reserving the discretion of the competent authority to take a decision only with respect to the conditions to be imposed for purposes of granting the condonation, we dispose of the matter. The competent authority however would be under a legal obligation to take a decision on the conditions to be imposed in terms of Rule 36 and to grant extension subject to such conditions, positively within three months from the date of receipt of the copy of this order and Judgment.
13. The writ petition stands allowed.
14. There shall be, however, no order as to costs.
15. Pronounced in open Court on this day i.e. 2nd day of December, 2024.

16. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Supratim Bhattacharya, J.)

(Madhuresh Prasad, J.)