

40. 13.09.2024
Court No.14
(Tanmoy)

WPA 9420 of 2024

Sayeeda Begam
- Versus -
The State of West Bengal & Ors.

Mr. Rajib Kumar Bose, Adv.,
Mr. Prodyat Kumar Ray, Adv.

...for the petitioner.

Ms. Sipra Mazumder, Adv.,
Ms. Prativa Ghatak, Adv.

...for the State.

Mr. Gourav Das, Adv.

...for DPSC, South 24 Parganas.

1. The petitioner is a retired primary school teacher. She has been held to be ineligible to receive pensionary benefits as there is a shortfall in the qualifying service of ten years.

2. The petitioner was issued letter of appointment on September 26, 2012 and the Director of School Education approved the panel containing the name of the petitioner on July 12, 2012. The petitioner has a shortfall of ten months and five days in completing the qualifying service period of ten years. According to the service rules, six months' shortfall may be condoned but any period exceeding six months is not condonable.

3. The petitioner submits that appointment letter was issued in her favour after she along with others filed a writ petition before this Court being WP No. 8387(W) of 2010, which was disposed of by the

Court on May 16, 2011, directing the respondent authority to take steps in the matter within a specified period of time.

4. The respondent authority decided the issue long after the time-period stipulated by the Court expired. Had the authority considered the case of the petitioner within the time as specified by the Court, there would not have been any shortfall in the qualifying service period.

5. It has been submitted that the petitioner served as *Sahayika* in the concerned Sishu Siksha Kendra (SSK) for nearly ten years prior to her submitting resignation for joining the post of assistant teacher in the primary school.

6. The petitioner submits that she was in no way responsible for the delay in issuing the appointment letter. She will be highly prejudiced if the deficiency in her qualifying service period is not condoned.

7. Learned Advocate representing the Council submits that the process of verification of the testimonials and documents of the petitioner took a long time for which there has been a delay in issuing the appointment letter in favour of the petitioner.

8. The appointment letter could not have been issued without verification of the documents. There was no intentional delay on the part of the Council in

issuing the appointment letter in favour of the petitioner. The appointment letter was issued only after the panel was approved by the Director of School Education.

9. Learned Advocate representing the State respondents submits that the prayer for condoning the shortfall was considered by the Finance Department, Government of West Bengal and the same has been turned down as not admissible as per the extant rules.

10. Learned Advocate for the Council relies on a judgment delivered by this Bench on February 11, 2022, in WPA NO. 27800 of 2017 with IA No: CAN/1/2019 (*Samar Nath Pal & Ors. v. The State of West Bengal & Ors.*) wherein the Court held that – *“Passing any order directing the respondents to pay pension in favour of the employees who did not qualify the stipulations laid down in the Scheme, would be grossly improper and unjust.”* The order passed in the writ petition stood affirmed by the Hon’ble Division Bench in MAT 288 of 2022 (*Shri Samar Nath Paul & Ors. v. The State of West Bengal & Ors.*) vide order dated May 2, 2022. Prayer has been made for dismissal of the writ petition.

11. I have heard the submissions made on behalf of both the parties. It appears that a similar issue fell for consideration before this Bench in WPA 10763 of 2024 (*Bansi Badan Kole v. The State of West*

Bengal & Ors.) wherein the Court held that as the petitioner is in no way responsible for the delay in issuing the letter of appointment and as the petitioner was fighting for his rights before the Court of Law, not allowing his prayer for condoning shortfall in his qualifying service period will amount to double jeopardy. The candidate never received his salary for the period he did not work, nor will he receive his pension after his retirement for no fault on his part.

12. In the instant case, it appears that the petitioner had to fight for her rights before the Court of Law. The Court fixed a time period within which the respondent authorities ought to have acted. The authority took far more time than specified by the Court to act in accordance with the order resulting in delay in issuance of the letter of appointment in favour of the petitioner.

13. As the petitioner was in no way responsible for the delay, accordingly, the prayer of the petitioner for condoning her shortfall in the qualifying service period is required to be allowed.

14. The ratio laid down in the matter of Samar Nath Pal (*supra*) cannot be made applicable in this case in view of the law laid down by the Hon'ble Division Bench of this Court on 31st October, 2019 in the matter of Asim Kumar Chakrabarti vs. The State of

West Bengal & Ors. (WPST No. 112 of 2019). Here the delay was not at all attributable to the petitioner.

15. The impugned order rejecting the prayer of the petitioner to condone the shortfall in her qualifying service period is, accordingly, quashed and set aside.

16. The District Inspector of Schools (PE), South 24 Parganas, is directed to grant notional benefits to the petitioner by treating her to be in service for the qualifying service period of ten years. It is made clear that the petitioner will not be entitled to salary for the period which she did not work and will not be entitled to any interest on account of delayed payment of her pension. This relief is being granted to the petitioner only to ensure that she qualifies for receiving her pension.

17. The District Inspector of Schools (PE), South 24 Parganas, is directed to process the pension file of the petitioner and ensure that she receives her pension at the earliest, but positively within a period of four months from the date of communication of this order.

18. As the order passed by the Principal Secretary, School Education Department is being set aside herein, accordingly, the rejection of the prayer of the petitioner by the Finance Department ought not to stand in the way of the pension sanctioning authority to proceed with the pension file of the petitioner in accordance with the direction passed hereinabove.

19. The writ petition stands disposed of.

20. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)