

13.08.2024
Item No.7
Ct. No.26
CHC

MAT 1322 of 2024
IA NO: CAN/1/2024

Amiya Kumar Chattopadhyay
Vs.
The State of West Bengal & ors.

Mr. Argha Banerjee, Advocate
Mr. A. K. Upadhyay, Advocate
Mrs. Namrata Singh
...for the appellant

Mr. Arjun Roy Mukherjee, Advocate
Mrs. Tuli Sinha, Advocate
...for the State

Mr. Suman Basu, Advocate
...for the respondent no.5

1. Appeal is directed against an order dated December, 18, 2023 passed in W.P.A. No. 1661 of 2023 by which, the claim of the writ petitioner/appellant, for considering the past service as qualifying service was rejected.
2. Learned advocate appearing for the appellant submits that, the appellant was initially appointed as Medical Inspector and worked as such from September 17, 1979 to January 31, 1981. Thereafter, the appellant was appointed as the Medical Officer for the period from February 1, 1981 till his resignation on July 2, 1990.
3. Learned advocate appearing for the appellant refers to Notification dated September 29, 1988 issued by

the Finance Department in support of his contention that, past service should be counted.

4. Learned advocate appearing for the State submits that, appellant was appointed as the Medical Officer on February 11, 1982 after a due selection process. A service book of the appellant was opened where, date of appointment of the appellant was recorded as February 11, 1982. Appellant during his tenure of service did not raise any issue as to his claim to counting the past service as qualifying service for receipt of pensionary benefits. Appellant tendered a letter seeking voluntary retirement on July 2, 1990 and left the organization without awaiting for the result of his request for retirement. High court directed the authorities to consider the appellant to retire with effect from July 2, 1990 by an order dated August 9, 2023 passed in W.P.A.1661 of 2023.

5. Learned advocate appearing for the State submits that, the appellant filed a memorandum of review directed against the impugned dated December 18, 2023 and that the review petition was rejected on May 17, 2024. Appellant did not prefer any appeal against the order passed on the review petition.

6. Issue before us is whether the appellant is entitled to pensionary benefits after taking into consideration his past employment.

7. Admitted facts are that, appellant was engaged as Medical Inspector on September 17, 1979 at which post he worked till January 31, 1981. Appellant participated in a fresh selection process for the post of Medical Officer and was appointed as such. There is an issue as to the date of his appointment as Medical Officer. However such dispute is limited to the actual date with the month and year being admitted namely, February 1981. Appellant tendered a resignation on July 2, 1990. Without waiting for such resignation to be accepted he left the organisation and did not join his service. In a writ petition at the behest of the writ petitioner, the Writ Court directed that, the appellant to be treated as voluntary retired on July 2, 1990.

8. Service Book of the appellant records the appellant to join the post of Medical Officer on February 11, 1982. Appellant did not dispute such date of joining during his service period, as noted in his service book. Appellant never approached the authorities for his past services to be considered for the purpose of pensionary benefits during his service tenure.

9. The issue of consideration of past services is now sought to be raked up in the present proceeding in 2024.

10. The Notification dated September 29, 1988 sought to be relied upon by the appellant does not

assist him. The Notification states that past service rendered in the parent department/offices used can be counted for the purpose of qualifying service of pension and the accumulation of the leave if they are duly forwarded to the new department. Such Notification conceives of an appointment where, the appointee is released from the parent department and is appointed in the subsequent department.

11. Such material fact is not pleaded and nor established either before learned Single Judge or before us.

12. In such circumstances, we find no merit in the present appeal.

13. MAT 1322 of 2024 along with connected application is dismissed, without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)