

25.06.2024.
Court No.13
Item No. 127
pk

W.P.A. No. 24288 of 2019
Sri Harendra Nath Bogi
Versus
The State of West Bengal & Ors.

Mr. Asim Banerjee,
Mr. Bholanath Pramanick
...For the petitioner.

Mr. Bhaskar Prasad Vaisya
Mr. Pinaki Bhattacharyya
...For the DPSC North 24 Parganas.

Mr. Ranjan Saha
... for the State

1. Affidavit in opposition and affidavit in reply filed in Court are taken on record.
2. The writ petitioner is aggrieved that his representation dated 11.11.2019 for grant of pension addressed to the DPPG, Director of School Education and the Chairman, DPSC, North 24 Parganas has not been considered till date.
3. The brief facts of the case leading to the representation are that the petitioner joined service on 19.11.2004 as an Assistant Teacher with Kathuria Junior Basic School in the Hasnabad Circle, under the DPSC, North 24 Parganas. He had superannuated from service on 10th May, 2012.
4. Upon superannuation the petitioner had completed seven years, six months and 13 days of service. The petitioner, therefore, fell short of about 2 years, 5 months and 17 days, of the required 10 years

for entitlement to pension under the DCRB Rules of the State applicable to teachers.

5. Learned counsel for the petitioner has referred to a certificate issued by the Electoral Registration Officer and SDO, Barrackpore that between the year 1979 and 1990 he has intermittently worked for about 487 days as a casual enumerator for the Election Department of Barrackpore purely on temporary basis. The work of the petitioner was for some days and each year his engagement was admittedly be intermittent, casual and on a daily rated basis.

6. Admittedly, the petitioner prior to joining DPSC, North 24-Parganas was not in any full time or continuous engagement with the State or Central Government.

7. Learned Counsel for the petitioner would rely upon a decision of the Single Bench of this court in the case of ***Sudhansumoy Majumdar vs. The State of West Bengal*** reported in ***(2008) 3 CAL LT 481 (HC)***. He would argue that the said decision must be applied in the instant case and the 487 days of service rendered by the petitioner prior to his joining as an Assistant Teacher with the DPSC, North 24-Parganas must also be counted for the purpose of length of service and pension.

8. It is further submitted by the learned Counsel for the petitioner that his client was employed as an Assistant Teacher in a category reserved for persons

who rendered such casual work with the State. He therefore, submits that the respondents should be directed to consider his representation.

9. Learned Counsel for the State has filed affidavit-in-opposition. The prayers made in the writ petition are vehemently opposed. It is submitted that any service rendered by the petitioner on casual basis even with the SDO, Barrackpore cannot be counted for the purpose of computation of the length of service of the petitioner for the purpose of pension. Such past service was casual, non-continuous and was on a daily wage basis for some days in a year. The same cannot constitute any recognized mode or engagement or employment within the State.

10. This Court has carefully heard the arguments advanced by the learned Counsel for the parties.

11. If the argument of the learned Counsel for the petitioner that it is essentially the casual work of the petitioner that was the reason for employment as Assistant Teacher in a category reserved for such persons, then it must be deemed that the petitioner was duly compensated for any such temporary or casual engagement by the State. The petitioner would be seeking a double benefit by, on one hand claiming recruitment as an Assistant Teacher in a reserved category, and on the other hand also for counting of the same period of casual engagement for the purpose

of computation of length of service for pension. This cannot be allowed or permitted in law.

12. In so far as the decision of the coordinate Bench in the case of ***Sudhansumoy Majumdar*** (Supra) is concerned, this Court notes that in the facts of the said case, the teacher therein prior to engagement with the DPSC concerned was in permanent employment with the Central Government under the Railways. It is essentially in this light that the expression 'Government' used in the DCRB Scheme of the State was interpreted by the coordinate Bench to include both the State as well as the Central Government.

13. The said decision therefore, cannot come to the aid of the petitioner as the facts are completely different and distinguishable from the present case.

14. In the instant case, it is seen that the petitioner's service falls short of more than two years, of the qualifying period of ten years for pension under the DCRB scheme. The State is authorized to condone only up to period of six months of short fall for the purpose of pension. It is not possible for the State to condone any period beyond six months.

15. It is true that this Court in some cases has condoned short falls between one and two months beyond the period of six months for qualifying service of ten years in exercise jurisdiction under Article 226 of the Constitution of India. However to condone more than two years of short fall in pension and that too in

the facts narrated hereinabove, would be grossly inappropriate and outside the scope of even the extraordinary jurisdiction of this Court.

16. The writ petitioner was aware at the time when he entered into the permanent service of the State of his actual date of retirement. He should have approached the authorities for reckoning of his past service even notionally, if at all he was entitled to. It is another thing how the State would have viewed the same. The writ petitioner chose to approach this Court after retirement despite being fully aware that he would not be entitled to pension right at the time of his entry into service as an Assistant Teacher of the State. The writ petitioner cannot be allowed to approbate and reprobate.

17. For the reasons stated hereinabove, the writ petition fails and is hereby dismissed.

18. There will be no order as to costs.

19. Let urgent xerox server copy of this order, if applied for, be given to the parties on usual undertaking.

(Rajasekhar Mantha, J.)