

213 26.02.2024
NB Ct. 24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(Appellate Side)

WPA 27174 of 2023

Amal Chakraborty
Vs.
The State of West Bengal & Ors.

Mr. Shanti Das,
Mr. Rohan Dwaipayan Bhowmick.
..for the petitioner.

Mr. Noelle Banerjee,
Ms. Kalpita Paul.
...for the State.

The reasoned order dated 7th October, 2021 passed by the Principal Secretary, Department of Urban Development and Municipal Affairs, Government of West Bengal refusing to condone the deficiency in the qualifying service of the petitioner for availing pensionary benefit is impugned in the instant writ petition.

It appears that a coordinate bench of this Court after thorough discussion of the facts of the case passed order directing the Principal Secretary to consider the case of the petitioner in the light of the observations made in the order and to consider as to whether the deficiency in service of two months and eighteen days can be condoned.

Fact remains that the petitioner served the Municipality for 14 years as casual employee and thereafter for 10 years as regular employee. The petitioner has in total served for a period of 24 years in the Municipality.

The order passed by the learned Single Judge was carried in appeal by the State of West Bengal and the Hon'ble Division Bench, after thorough hearing, was pleased to observe that the Principal Secretary has been given powers by the Court not to fetter the constitutional principles by administrative rules.

The Court relied upon the provisions of Articles 14 and 21 to enable the administrative authority i.e. the Principal Secretary to override the limitation imposed by the 1985 Rules relying on the order passed by the learned Single Judge.

It appears from the order impugned that the Principal Secretary once again relied upon the Rules but failed to consider the order in the light of the observations made by the learned Single Judge affirmed by the Hon'ble Division Bench.

The Principal Secretary failed to appreciate that the employee had put in nearly 24 years of service in the Municipality and not allowing the employee to avail the terminal benefits by holding that there has been deficiency in the qualifying service will be sheer injustice to the petitioner.

The learned Single Judge and the Hon'ble Division Bench both directed the Principal Secretary to rely upon the provisions of the Constitution of India to provide the benefit to the employee. The Court is convinced that the Principal Secretary failed to consider the case of the petitioner in its proper perspective.

In view of the above, the impugned order of rejection is liable to be set aside and is, accordingly, set aside.

The Principal Secretary is directed to condone the deficiency of the qualifying service of the petitioner so that the petitioner can avail all his pensionary benefits.

Steps shall be taken in the matter for releasing the terminal benefits of the petitioner at the earliest, but positively within a period of eight weeks from the date of communication of this order.

The instruction forwarded by the Principal Secretary of the department be retained with the records.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)