

WPO No. 1829 of 2023
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SAMIR BAIDYA
Versus
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 20th February, 2024

Appearance :

Mr. Debdutta Basu, Adv.

... for petitioner

Ms. Deblina Chattaraj, Adv.

Ms. Angana Dutta, Adv.

...for respondent Corporation

Mr. Tapan Kumar Mukherjee, Adv.

Ms. Tuli Sinha, Adv.

... for State

The Court :

1. The facts of the case have been set out extensively in the earlier two orders dated 2nd January, 2024 and 16th January, 2024. The Court has received reports from the C.T.C and the exception thereto taken by the petitioner.
2. Counsel for the petitioner would argue firstly that the letter of regularisation of the petitioner should have been dated as on the notification of the Transport department of the Government of West Bengal, dated 24th September, 2009, which was approved by the Governor. His regularization must be reckoned from 24th September,

2009. In such event the petitioner's shortfall of service would be within six months, condonable by the employer under the Pension Rules of the C.T.C for the purpose of pension.

3. It is next argued that for the fault on the part of the employer to issue the appointment letter in time, the petitioner cannot be allowed to suffer. Reliance in this regard is placed on a decision of a coordinate Bench dated **3rd August, 2023 in WPA 7881 of 2022 (Goalbadan Mandal vs. State of West Bengal & Ors.)**.
4. It is next argued by Mr. Basu that the petitioner was already serving the C.T.C as a driver on casual basis for more than 10 years prior to 2009. Such period ought to be taken into consideration for the purpose of length of service for pension. Reliance in this regard is placed on an unreported decision of the Supreme Court in the case of **State of Himachal Pradesh & Anr. vs. Sheela Devi, being SLP (Civil) No. 10399/2020, decided on 7th August, 2023**.
5. It is, therefore, submitted that applying the ratio in the aforesaid two cases, the 6 months and 28 days should be condoned by this Court and/or the respondents.
6. Ms. Deblina Chattaraj, learned Counsel appearing for the C.T.C would submit the petitioner is guilty of suppression of material facts. It is submitted that the Scheme under which the petitioner was appointed was framed by the C.T.C with the approval of the State pursuant to a decision of a Division Bench of this Court dated 10th July, 2006 in F.M.A No. 721-22 of 2005 (The Calcutta Tramways Company (1978) Ltd.

& Ors. vs. Sri Sasanka Narayan Chakraborty & Ors.). The writ petitioner was a party to such proceeding.

7. It is argued by Ms. Chattaraj that the petitioner, having benefited from an order of a Division Bench and having obtained regularisation pursuant thereto ought to have disclosed the same in his writ petition. The suppression of the same was intended to avoid the compulsion of having to accept the terms and conditions of the orders of the Single and Division Benches and the terms of the Scheme under which the petitioner was regularized.
8. It is next argued that the petitioner was well aware of the date of his regularisation and date of his superannuation, in the year 2009. He is, therefore, estopped from challenging the effective date of regularisation or claiming any condonation of the shortfall of service for pension. Reliance is placed on an unreported decision of a Division Bench of this Court dated **18th August, 2022 in WP.ST 75 of 2022 (Jagat Bandhu Biswas vs. The State of West Bengal & Ors.)**.
9. In addition thereto, it is submitted by the employer relying upon the service record of the petitioner annexed to the report filed on his behalf that the petitioner did not enjoy an unblemished service. There were several occasions of causing damage to buses driven by him. There was also occasion where the petitioner was found unauthorisedly holding a sum of Rs.40. He was fined on each of the occasions, as above.
10. Learned Counsel appearing for the State, Ms. Tuli Sinha, led by Mr. Tapan Kumar Mukherjee, learned senior Counsel, has submitted that

the writ petitioner has approached this Court belatedly three years after his retirement in the year 2019. The claim for pension was never seriously, therefore, considered by the petitioner himself. The petitioner is, therefore, not entitled to any equitable relief.

11. This Court has carefully considered the rival submissions advanced by the learned Counsel for the petitioner Mr. Basu, Ms. Dutta for the employer and Ms. Sinha for the State.
12. It is now well-settled that equitable relief is negated and/or denied when a person does not come to court with clean hands or has suppressed material facts.
13. The directions contained in the order of the Division Bench dated 18th August, 2022 in Jagat Bandhu Biswas (supra) and the submissions made on behalf of the employer in contempt proceedings of the said order on 30th October, 2009 in C.R.C 10-11 of 2009, lead to only one conclusion. The regularisation of services of casual employees in the C.T.C accorded firstly to the limited extent by the Division Bench in order dated 18th August, 2022 (supra) was a scheme of the CTC. After contempt proceedings were initiated against the employer. The subsequent addition of 1110 employees must and should be also be understood as under Scheme propounded by the employer.
14. It is only pursuant such Schemes that regularisation can be made as held by the Hon'ble Supreme Court in the case of State of Karnataka vs. Umadevi, reported in **(2006) 4 SCC 1**.

15. The petitioner, therefore, having taken benefit under the aforesaid Scheme is bound by the terms and conditions thereof and cannot subsequently resile from the same. The petitioner has accepted and acted upon his letter of employment dated 30th November, 2009, which made his appointment from 30th October, 2009.
16. Even if one considers that a shortfall of 24 days, too insignificant a period for the writ Court to refuse to exercise jurisdiction, to condone the same by itself would not confer any benefit on the petitioner. The employer must thereafter condone the 6 months of shortfall in the 10 year period of length of service for pension. Since there is discretion vested in the employer. To pre-empt any such decision by the employer would be grossly inappropriate for a writ Court. The matter does not come this far.
17. The writ petitioner appears to have waited for a period of 14 years after his initial appointment to approach this Court. He has, however, approached the employer, that too, after two years of retirement with a representation for pension.
18. A claimant for pension is normally doubly vigilant. The shortfall of length of service was known to the petitioner when received his letter of regularization on 14th November 2009. He worked for more ten years thereafter and never chose to challenge the effective date of regularisation. To say that the petitioner was not aware of his rights would be incorrect since he has already approached Court in the year

2005 before a Single Bench, Division Bench and thereafter in contempt proceedings.

19. In the backdrop of the above, it would not be inappropriate to apply the thrust of the decision in the case of Jagat Bandhu Biswas (supra), relied upon by the Counsel for the respondents.
20. The decision of Goalbadan Mandal (supra) may not come to the aid of the petitioner since the facts are completely different. In the said case, petitioner who secured regular employment after protracted litigation was held entitled to condonation of a shortfall of a few months in qualifying service for pension. The employment in the said case was to a permanent post of an Assistant teacher under the State. The case is distinguishable on the facts and therefore cannot be applied in the instant case.
21. In so far as the decision of State of Himachal Pradesh & Anr. vs. Sheela Devi (supra) is concerned, it is the interpretation of Rule 17 of the New Pension Scheme floated by the State of Haryana was subject matter of interpretation. By such Rule the period of service rendered by the contractual employees before regularisation was reckonable for the purpose of pension.
22. The decision was thus rendered in the context of a framed pension regulation, which provided for service rendered prior to regularisation, relevant only for the purpose of length of service for pension.
23. In the instant case, at the risk of repetition, it is stated that the petitioner obtained regularisation of service under a Scheme and that

too pursuant to orders of court. The petitioner is, therefore, bound by the terms of his regularisation and cannot be allowed to resile therefrom. The principles of estoppel prevent the petitioner from doing so.

24. In addition to the above, this Court finds the prayers in the writ petition barred by the principles of delay and laches. There is delay of about three years in approaching the writ Court after superannuation by the petitioner, and fourteen years after regularisation. The petitioner waited for two years to make even a representation before the employer for pension or condonation of the shortfall.
25. In the facts and circumstances aforesaid, this Court is of the view that the petitioner is not entitled to pension or condonation of any shortfall in length of service, no matter how insignificant or small.
26. The writ petition fails and is hereby dismissed.
27. There shall, however, be no order as to costs.

(RAJASEKHAR MANTHA, J.)