

08.08.2025
Item No.08
Court No.11
KCP

MAT 1247 of 2025
with
IA No. CAN 1 of 2025

Saktipada Pradhan
- Versus -
The State of West Bengal & Ors.

Mr. Ujjal Ray,
Mr. Arpa Chakraborty,
Mr. Binit Kumar.
...for the Appellant

Mr. Amitabrata Ray, Ld. G.P.
Mr. Jaharlal De, Ld. A.G.P.
Mr. Sudipto Panda.
...for the State

Dr. Sutanu Kr. Patra,
Ms. Supriya Dubey.
...for the W.B.C.S.S.C

Affidavit-of-service, as filed, be kept on record.

The subject matter of challenge in the present appeal is a judgment dated 4th August, 2025 passed by the learned Judge in the writ petition being WPA No.13657 of 2025 which was preferred by preferred by the appellant herein along with one Abul Hassan Seikh *inter alia* praying for issuance of necessary direction upon the respondents to treat them to have been notionally appointed from the date of their recommendation in November, 2024 for all service related purposes, including the computation of qualifying service under Rule 10 of the West Bengal

Revision of Pay and Allowances Rules, 2019 notified *vide* memo dated 13th December, 2019. As the writ petition was treated to have been filed espousing different causes of action, the same was entertained only in respect of the appellant.

The undisputed facts are that the appellant participated in the selection process for appointment to a post of Assistant Teacher for upper primary level of classes. He emerged to be successful and was recommended for appointment at Radhanagar Singhapara Junior High School (hereinafter referred to as the first school) *vide* memo dated 18th November, 2024 issued by the Chairman, West Bengal School Service Commission (in short, the said Commission). Pursuant thereto, the appellant went to join the first school but he was not allowed to join as the recommendation was made in a category in which as per the roster there was no vacancy in the first school. The teacher-in-charge of the first school intimated such fact to the Chairman of the said Commission by a letter dated 27th December, 2024. Subsequent thereto, *vide* memo dated 16th January, 2024 issued by Chairman of the said Commission the appellant was recommended to Patibunia Junior High School (hereinafter referred to as the second school). He, accordingly, joined the second school on 30th January, 2025 and his

appointment was approved by the District Inspector of Schools (S.E.), South 24 Parganas [(hereinafter referred to as the DI (SE)] *vide* memo dated 7th February, 2025. Upon joining, the appellant submitted a representation to the said Commission said the State authorities for grant of increment in terms of Rule 10 of the notification dated 13th December, 2019 hereinafter referred to as the said notification).. As the same was not considered, the appellant preferred the writ petition but the same was dismissed observing *inter alia* as follows:

‘the steps taken by the Commission as emanates from aforesaid discussion it is found that it is not a case of mala fide rather Commission took steps immediately after receiving intimation from the said school authority on 27th December, 2024 and issued another recommendation memo dated 16th January, 2025 thereby giving opportunity to the petitioner to join the post of Assistant Teacher in Patibunia Junior High School and petitioner joined the said school on 30th January, 2025. In this process if a date which would have been fixed as date of increment in connection with service of the petitioner had he joined the post in terms of the recommendation memo dated 18th November, 2024 is missed, same needs to be treated under fortuitous circumstances’.

Mr. Ujjal Ray, learned advocate appearing for the appellant contends that had the appellant been appointed in terms of the initial recommendation letter issued on 18th November, 2024, he would have completed six months of service and more prior to the first day of July, 2025 which would have entitled him

to incremental benefits, as provided under Rule 10 of the said notification.

He argues that the delay which had occurred towards joining is not attributable to the appellant and accordingly, for the fault on the part of the respondents, he cannot be denied the incremental benefits. However, the Court erroneously proceeded on the basis that as the appellant could not establish any *mala fide* on the part of the authorities, he cannot be granted the relief, as prayed.

He contends that all the candidates who participated along with the appellant in the selection process conducted by the said Commission had been able to complete six months of service prior to the first day of July, 2025 and had earned the incremental benefits, as provided under Rule 10 of the said notification but the appellant had been deprived not on account of any fortuitous circumstances but for the fault of the respondents. Such argument, as urged, was glossed over by the learned Judge.

Dr. Patra, learned advocate appearing for the said Commission submits that the delay that had occurred is not attributable to the said Commission since the vacancies had been reported by Commissioner of School Education. Thus, it cannot be urged that the Commission was at fault.

Mr. De, learned Additional Government Pleader assisted by Mr. Panda, learned advocate submits that the mandatory precondition towards grant of incremental benefit, as provided under Rule 10 is that the employee has to complete six months of service prior to the first day of July. Admittedly, the appellant joined on 30th January, 2025 and that as such, he could not complete six months of service prior to 1st July, 2025. In view thereof, his prayer cannot be entertained and the State cannot be saddled with any obligation to condone any deficiency of service moreso when, the issue does not pertain to grant of benefits under any benevolent scheme.

He submits that there had been no laches on the part of the State since the appellant's appointment was approved within seven days of his appointment. The appellant accepted his appointment on 30th January, 2025 and approval of such appointment on 7th February, 2025 without raising any objection. In view thereof, question of condonation of any shortage of service for the purpose of grant of incremental benefits does not occasion moreso when the same would lead to alteration of his date of entry in service and would set a precedent and open a flood gate of litigation.

In reply, Mr. Ray submits that as a model employer the State Government must conduct itself

with high probity and candour and ensure that its employees do not succumb to the procedural rigmarole.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Rule 10 of the notification dated 13th December, 2019 runs as follows:

‘10. Date of next increment in revised pay structure – In respect of all employees, there shall be a uniform date of annual increment, as existing and such date of annual increment shall be the 1st day of July of every year.

Note – In the case of employees completing 6 (six) months and more in the revised pay structure as on 1st day of July shall be eligible to be granted increment.

Provided that when an employee is under extra-ordinary leave, less than 1 (one) year, he will be allowed notional periodical increment for that year and actual benefit may be allowed after the end of the extra-ordinary leave counting the period of non-qualifying service spent on such leave taken together.

Provided further that in case the extra-ordinary leave stretches over one year and more, no annual increment will be admissible for the year(s) spent on such leave. However, he will be allowed increment with effect from the next 1st July of the year when he joins duty after spending such leave.

Provided further that if an employee is under suspension and is reinstated and the period of suspension has not been treated as period spent on duty, the incremental benefit and other service benefit as mentioned herein shall be regulated as per method clarified above.’

The provisions of Rule 10 of the said notification does not rule out condonation of deficiency of

qualifying service towards grant of incremental benefits moreso when such deficiency is not attributable to the concerned employee. The Rule speaks that in cases of approved extra-ordinary leave for less than a year and in cases of reinstatement after suspension, notional periodical increment may be allowed.

In the present case the appellant joined on 30th January, 2025 and prior to the first day of July, 2025 he was able to complete about five months of service and that as such the deficiency towards grant of incremental benefit is of about a month. Had he been allowed to join on the basis of his first recommendation, he would have completed six months of service prior to the first day of July, 2025. The appellant did not urge any issue of *mala fide* but the delay that had occurred is not attributable to him and he cannot be made to suffer for the laches on the part of the respondents. Such delay is also neither insurmountable nor inordinate. Equity regards as done, which should have been done. In such circumstances and balancing the equities among the parties, we are of the opinion that the incremental benefits cannot be scuttled and the deficiency in service towards grant of incremental benefit of about a month that had occurred needs to be condoned for the purpose of granting of incremental benefits with effect

from 1st July, 2025. However, such condonation of deficiency would not have any effect as regards other service-related benefits including seniority. The appellant's date of appointment shall remain to be 30th January, 2025.

Accordingly, the judgment impugned is set aside and the State respondents are directed to grant the incremental benefits as specified under Rule 10 of the said notification to the appellant notionally on and from 1st July, 2025 upon condoning the said period of deficiency of about a month. The actual incremental benefits would commence from 1st July, 2026.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)