

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

W. P. A. 18075 of 2015

Manik Chandra Mandal

Versus

State of West Bengal & Ors.

For the Petitioner : Mr. Saurav Prasanna Mukherjee,
Mr. Soumya Mukherjee.

For the State : Mr. Jahar Dutta,
Mr. Manoj Kumar Mondal.

Hearing concluded on : 14.01.2025

Judgement on : 21.01.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred praying for direction upon the respondents to withdraw, recall, rescind and cancel the impugned Memo dated 23.06.2015 in respect of rejection of petitioner's pension and/or direct the respondent nos. 2 and 3 to allow the claim of pension of the petitioner for the tenure of petitioner's service.

- 2.** It appears from the joining report of the petitioner that the petitioner joined on the 2nd day of August, 2006 forenoon as Gram Panchayat Karmee. The petitioner has relied upon an order dated 17.02.2004 passed by the Hon'ble High Court in WP No. 14647(W) of 2002 wherein the writ petition was disposed of directing the State, on accepting the circular dated 16th April, 2003 to give effect to the said notification, to consider all the cases which would be guided by such circular as well as notification dated 8th October, 2003. Appropriate authorities were directed to take the decision within a period of three months from the date of the communication of the order.
- 3.** In compliance with the said direction of the Hon'ble High Court, the Block Development Officer directed the petitioner, vide Memo dated 28.12.2005 to submit a list of documents and subsequently by a provisional admit card dated 06.01.2006 permitted the petitioner to appear for the written test to be held on 8th January, 2006.
- 4.** The petitioner joined on 2nd August, 2006. The petitioner has retired on 30.09.2015 and there is a **shortfall of one year** to get the benefit of pension and as such has preferred the writ application praying for such relaxation.

5. Vide an order dated 23.06.2015, the Assistant Director of Pension, Provident Fund and Group Insurance, West Bengal passed an order wherein it has been ordered that as the petitioner has rendered less than 10 years' of service, he is eligible for Gratuity only. The Block Development Officer, vide a Memo dated 21.07.2015, resubmitted an Audit Observation to the Assistant Director of Pension, Provident Fund and Group Insurance, Finance Department stating as follows:-

“Audit Observation:

Audit Observation No. 1

1. *Since the appointment of Sri Manik Chandra Mondal as a Gram Panchayat Karmee is in obedience to the order of the Hon'ble High Court, Kolkata, condonation order from P&RD Dept. for relaxation of overage does not arise. Relevant orders of the Hon'ble High Court, Kolkata is attached herewith at page 1(One) of the service Book.*

2. Audit Observation No. 2

As Sri Manik Chandra Mondal has rendered less than 10 years of service, the relevant orders and rules will apply in that case and he may be sanctioned gratuity accordingly. The calculation sheet may kindly be observed at page no. 17

Annexure IX enclosed herewith. The overdrawn amount, if any, may be deducted.

3. Audit observation no. 3

Attested copy of educational qualification has been attached at the last page of connected papers. It may kindly be observed.

The defects kindly detected by the authority are hence rectified and Complied to the request for further necessary action please.

Yours faithfully,

Sd/-

Block Development Officer

Rajnagar Development Block"

- 6.** Learned counsel for the petitioner has relied upon a judgment of a coordinate Bench dated 03.08.2023 passed in WPA 7881 of 2022 **(Goalbadan Mandal –Vs.- State of West Bengal & Ors.)** wherein the learned Single Bench directed as follows:-

“16. Accordingly, the impugned order stands set aside. The Secretary, Department of Primary Education being the first respondent is directed to consider the claim of the petitioner for pensionary benefit, by treating the petitioner to be notionally appointed on the date when the decision was taken to forward the name of

the petitioner to the Director of Secondary Education, West Bengal for approval of appointment and decide such claim by passing a reasoned order in the light of the observations contained in this order after giving an opportunity of hearing to the petitioner or his authorized representative and to communicate the order to the petitioner. The entire exercise shall be completed within a period of four weeks from the date of receipt of a server copy of this order. With the aforesaid direction, the writ petition stands disposed of. There shall be no order as to costs.”

7. It appears that the learned Single Bench in **Goalbadan Mandal –Vs.- State of West Bengal & Ors., (Supra)** permitted the said concession on the ground that the decision to forward the name of the petitioner to the Director of Secondary Education for approval of appointment, was pending for the period and as such the petitioner was granted such benefit.
8. **In the present case,** the petitioner has submitted that he had to approach the High Court for such an appointment. That precious time was lost in pursuing the matter before the High Court and as such the petitioner has been prejudiced as there is a shortfall of one year, to be eligible for pension.

9. The recruitment of the petitioner was considered in view of order dated 17.02.2004 passed in WP No. 14647(W) of 2002 wherein the Court held as follows:-

*“.....The order as passed on **12.12.2003** governs similar type of matters and **since this matter escaped from bringing the list under such heading which has been subsequently pointed out,** the present matter is treated as on day's list as 'For Orders' and similar order as recorded on 12.12.2003 is passed hereunder.....”*

10. It appears that the matter of the petitioner somehow did not appear in the list and was subsequently pointed out and as **such there was a prima facie delay in considering the case of the petitioner.**
11. Accordingly, the impugned order dated 23.06.2015 is set aside. The appropriate authority, being the respondents herein, are directed to consider the claim of the petitioner for pensionary benefit by treating the petitioner to be notionally appointed one year/or as required to cover the shortfall prior to the date of joining so as to enable the petitioner to get the benefit of pension.

12. The respondents are directed to decide the claim of the petitioner by passing a reasoned order in the light of the observations contained in this order and also by giving an opportunity of hearing to the petitioner or his authorized representative **within a period of one month** from the date of this order.
13. **The writ petition is accordingly disposed of.**
14. All connected applications, if any, stand disposed of.
15. Interim order, if any, stands vacated.
16. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)