

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T. 172 of 2024

Hiralal Ghosh

Vs.

The State of West Bengal & Ors.

For the Petitioner : Ms. Sabita Khutia (Bhunya)

For the State : Mr. Biswabrata Basu Mallick, Id. AGP,
Ms. Ashmita Chakraborty

Judgment on : August 1, 2025.

Madhuresh Prasad, J.:

1. The writ petitioner was the applicant before the West Bengal Administrative Tribunal ('SAT' for short) in O.A. No. 1324 of 2016 which has been disposed of as being devoid of merit by the SAT by its order dated 04.04.2024 which is assailed in the present writ proceedings.
2. A brief prelude is necessary for considering the issue and is thus being taken note of. The petitioner claims to be working as a temporary Spray Worker in the office of the Chief Medical Officer of Health at Medinipur since 1973 to 1974, and thereafter from 1976 to 1991, up until his regularization/ absorption against an existing vacancy in the department under Orders of the Director of Health Services, West Bengal contained in order dated 29.12.2008. Pursuant to such absorption he has joined on

16.01.2009 as a Group 'D' Assistant (GDA). He attained the age of superannuation, and retired on 31.01.2015. He, therefore, has been considered by the respondents to have only six years and about half a month of service as a Government employee. The department has found such service to be falling short of the requisite 10 years qualifying service for the grant of pensionary benefits. The petitioner thus is deprived of any pensionary benefits whatsoever.

3. The facts which are not in dispute are that for the purpose of absorption of such seasonal Spray Workers the Government issued a Memo No. 100-Emp dated 13.03.1996. The same contemplated an exercise to be undertaken to identify candidates who had worked for 120 days for 5 consecutive seasons. A list was to be prepared accordingly by the concerned Chief Medical Officer of Health, and to be sent to the Directorate of Health Services, West Bengal. The petitioner was claiming to be a beneficiary of such exercise since he was working as a seasonal worker for at least 120 days in the 5 consecutive seasons. It would be relevant to mention here that benefit of the 100-Emp dated 13.03.1996 was not to be extended to the seasonal Spray Workers engaged after the cut of date 31.12.1991.
4. The petitioner claimed to be a beneficiary under 100-Emp dated 13.03.1996. He thus filed an original application before the SAT. The O.A. No. 876 of 1998 filed by the petitioner along with others was disposed of on 26.09.2001, with certain directions including a direction to the CMOH concerned to identify the beneficiary in terms of the 100-Emp dated 13.03.1996 and to prepare a chart showing vacancy position

in the office of the CMOH, to be sent to the Directorate of Health Services within two months' time. It was further directed that 50 per cent of the district wise vacancies be filled up by eligible candidates in strict order of seniority, the first appointment to commence with effect from 01.01.2002. The Tribunal directed that those who have crossed 45 years age would be entitled to condonation. There were other usual conditions regarding the absorption being subject to police verification, medical test and observing reservation etc.

5. The order of the Tribunal dated 26.09.2001 in O.A. No. 876 of 1998 was challenged by the State by way of a writ petition. The W.P.S.T. No. 1282 of 2001 filed by the State was dismissed by the Division Bench of the High Court on 31.01.2009. The relevant extract of the order passed by this Court in W.P.S.T. No. 1282 of 2001 reads as follows:

“With regard to condonation of age bar also, the first Division bench considering the entire matter on this aspect held that absorption should be irrespective of the age bar.

The said judgment of the first Division Bench was passed on 13 May, 1999. The same question again cropped up before another Division Bench (hereinafter referred as Second Division Bench) in WPST No. 362 of 1999 which was decided on 29th September, 2000. While considering the said proceeding the second Division Bench considered the law taking note of the various judgments of the apex Court on the question of regularisation of ad-hoc casual employees. But the second Division Bench did not notice, that the said cases were decided holding that casual employment in violation of recruitment rules, does not create a right for regularisation and in none of those cases policy as contained in the said three notifications was available or explained. The notifications involved in the proceeding before the second Division Bench and the policy reflected therein were already considered and decided by the first Division Bench as stated hereinabove. It is the settled law that in case of difference of opinion a

subsequent coordinate bench should not decide the matter finally following its own opinion and it has to refer the matter to a larger bench.

In such circumstances, the law and the right flowing from said notifications having been decided by the first Division Bench, the same is binding so far as application and explanation of the policy and the notifications are concerned.

With regard to restriction of relief upto 50 per cent, we find that in terms of the said policy restriction of limit to 50 per cent of the available vacancies, has been held to be not acceptable by the first Division bench and it was observed therein as follows “In any event the notifications do not contain any percentage limitation as far as the petitioners are concerned”. Therefore, in the present case also in absence of any material applicable to the petitioners, percentage limitation is not to be applied.

With regard to the condonation of age bar is concerned, the finding was recorded by the first Division Bench considering several decisions and therefore, in the present case also we do approve that the petitioners are entitled to get exemption as regards age bar in respect of their appointments particularly when petitioners are already in service and it is case of regularisation only and not of initial recruitment.

It appears that in the impugned order the policy of the authorities as contained in the notifications dated August 3, 1979, August 29, 1980 and circular dated 13th March, 1996 were taken into consideration and without considering individual cases of the petitioners directions have been given and we have no reason to interfere with the said directions except the modifications in view of our findings as regards condonation of age bar and percentage limitation of the available vacancies as indicated hereinabove.

Therefore, the impugned judgment stands modified and the writ petition is disposed of. No order as to costs.”

6. This Court’s order was assailed by the State before the Apex Court. The SLP filed by the State was dismissed on 19.09.2008.
7. It is only thereafter that the respondents have issued the order absorbing the petitioners as a regular Government employee by the order dated 29.12.2008 pursuant to which the petitioner joined on 16.01.2009. It is indubitable that the petitioner had put in at least 120 days of work in 5

consecutive seasons prior to issuance of 100-Emp dated 13.03.1996 since this was a pre-requisite for absorption, and the petitioners have been absorbed by the respondents. The authorities, however, have absorbed the petitioners only after a protracted litigation before the SAT, the Calcutta High Court and the Supreme Court in the three proceedings indicated above.

8. The State was not honouring its own scheme/ decision regarding absorption of seasonal Spray Workers as contemplated under 100-EMP dated 13.03.1996 and, therefore, the petitioner was saddled with unwanted and unnecessary protracted litigation pursuant to which he was finally absorbed in the year 2009, whereas the scheme for such absorption in 100-Emp dated 13.03.1996 is of the year 1996. It is further submitted that there is a gap of two years in between passing of the order of this Court in W.P.S.T. No. 1282 of 2001 and filing of the SLP assailing the said order. The inordinate delay in petitioner's regularisation was occasioned due to the litigation thrust upon the petitioners; and the same cannot be made the basis of depriving the petitioner of pensionary benefits by raising an issue regarding there being a deficiency in qualifying service. As per the petitioner's Counsel the deficiency in qualifying service has been occasioned and is solely attributable to the respondents in view of the circumstances noted above. It is further submitted that Rule 18(b) of the DCRB Rules has been relaxed vide F.D. Memo No. 2255F dated 22.03.1973 and contemplates that a person who has worked even as a temporary worker/ employee for a period of 10

years is also entitled to the benefit of pension. The petitioner, therefore, even under Rule 18(b) is entitled to grant of pensionary benefits.

9. The State Counsel on the other hand, submits that the State has been diligently pursuing the litigation right from the O.A. filed by the petitioner till the SLP filed by the State Authorities. Immediately after the issue was settled by order passed by the Apex Court on 19.09.2008, the respondents have come out with the absorption order dated 29.12.2008 since the order of the Tribunal was ultimately upheld by all the forums.

10. Direction IV contained in the Tribunal's order is relevant in this regard as the same specifically directs the first appointment to commence with effect from 01.01.2002, only after identification of eligible candidates and number of vacancies. The further submission is that the Tribunal has not directed for grant of any benefit with retrospectivity. There is no direction in this regard and, therefore, the prayer made by the petitioners in the O.A. No. 1324 of 2016 has rightly been rejected by the SAT and the impugned order passed by the SAT does not require any interference.

11. We find that from bare perusal of Rule 17 of the DCRB Rules it is obvious that if a continuous temporary or casual employment for so many years has ultimately culminated into absorption of the employee in the regular establishment then the service rendered as a casual/temporary employer is to be taken to constitute qualifying service. Judgment of this Court in the case of **Nemai Ch. Chatterjee and Others vs. State of West Bengal and Others** reported in **2014 SCC Online Cal 9692** is relevant in this regard. The co-ordinate Bench in the case of Nemai Ch. Chatterjee (supra) has considered the provisions in the DCRB

Rules including Rule 17, Rule 18 and Amendment of Rule 18 (b) as per Memo No. 2255(F) issued by the Finance Department on 22.03.1973. The effect of Rule 22(1) has also been considered. After detailed consideration of the provisions the co-ordinate Bench was of the opinion that the DCRB Rules does not provide excluding services rendered during service as a temporary employees for the purpose of reckoning qualifying service for pension, provided his service is followed immediately, without a break, by permanent service. The co-ordinate Bench thus held:

“..... We have considered the DCRB Rule independently and in our opinion the period of service rendered by a Government Servant on a temporary basis must be reckoned for the purpose of qualifying service and consequently payment of pension, provided, that service is followed immediately and without a break by permanent service.

This petition is allowed.

However, where the Petitioners have not rendered ten years qualifying service even after reckoning the period of service rendered by them as temporary employees they would not be entitled to pension as a matter of right. In such cases the Government will apply Rule 36 of the DCRB Rules under which it is vested with the power to condone the deficiency in the qualifying service up to six months. An employee may also apply to the Governor of the State of West Bengal for the relaxation of the Rules under Rule 4 of the DCRB Rules.”

12.As per decision of the Coordinate Bench in the case of **Nemai Ch. Chatterjee and Others** (Supra) the petitioner is entitled to count the temporary services rendered by him as a Seasonal Spray Worker from 1976 till the date of his regularization in the year 2009, as the regularization/absorption is preceded by continuous services for decades, and there was no break in between. Once such period is taken into consideration as qualifying service, the petitioner would cross the requisite ten years period of qualifying service for grant of basic pensionary benefits under the DCRB Rules.

13. Another aspect requiring consideration is that in the present case petitioner's absorption was in terms of Memo No. 100/Emp dated 13.03.1996, even though the State Administrative Tribunal issued a specific direction on 26.09.2001, to take steps in accordance with the 100/Emp. for completing the exercise of absorption/regularization, the authorities procrastinated. They filed a writ petition which also was dismissed by the Division Bench on 31.01. 2009. The Division Bench in the order passed in WPST 1282 of 2001 extracted above has acknowledged that "*the petitioners are already in service it is case of regularization only and not of initial recruitment*". The order of the Division Bench was assailed by the State by filing a SLP two years after the decision of the Division Bench, which SLP was also dismissed. The petitioner, thus continued as temporary employee, which status was followed by his absorption/regularization without any break in between. Under the circumstances we are also of the opinion that the writ petitioner's right under 100/Emp. was ultimately realised after protracted litigation by the State Government, wherein it has lost at all stages including the Tribunal, the Division Bench of the High Court as well as the Hon'ble apex Court. The delay therefor in giving effect to the petitioner's right for consideration which culminated in his regularization is clearly attributable to the State Government.

14. It is not also the case of the State Government that they did not implement the directions of the SAT or the Division Bench because there was any interim order of stay operating. Under such circumstances the Apex Court, recently in the case of **Pawan Kumar Agarwal and**

Another vs. State of Chhattisgarh and Others reported in **2025 SCC Online SC 900** held that delay in giving effect to order of the High Court by the State Government should not be permitted to act to the prejudice of the parties. Relying upon an earlier decision in the case of **Pilla Sitaram Patrudu & Ors. v. Union of India & Anr. Reported in (1996) 8 SCC 637** the Apex Court held:

“12. It is clear from the record that the writ petition filed by the appellants was decided on 2nd May 2012. As such, the State ought to have appointed the appellants within a reasonable time. Though the State had challenged the said order in an SLP before this Court, the order of the High Court was never stayed by this Court. Ultimately, the SLP came to be dismissed on 30th November 2012. Even thereafter, for a period of around 8 months, no action was taken by the State in issuing an order of appointment to the appellants.

13. Undisputedly, the 2012 batch was appointed on 10th July 2012 i.e., after a period of more than 2 months from the date of the order of the High Court. As already pointed out by us hereinabove, no one has appeared for the candidate from the 2012 batch of the Judicial Officers who was impleaded in the present case.

14. We are of the considered opinion that the right to be appointed accrued to the appellants on the date of the order of the High Court i.e. on 2nd May 2012. The period between the date of the order of the High Court and the appointment of the batch of 2012 is more than 2 months. During the said period, the respondent-State could very well have fulfilled the necessary formalities like police verification, etc., and issued an order of appointment to the appellants.

15. We are, therefore, of the considered opinion that the delay in giving effect to the order of the High Court dated 2nd May 2012 by the State Government should not be permitted to act to the prejudice of the appellants. In this respect, we may gainfully refer to the order passed by this Court in the case of Pilla Sitaram Patrudu v. Union of India¹.”

15. The present case does not involve any issue of seniority affecting any 3rd party rights. Being guided by recent decision of the Apex Court in the case of **Pawan Kumar Agarwal & Anr. V. State of Chhattisgarh & Ors. reported in 2025, SCC On Line SC 900** we are also of the view that the grant of benefit of absorption/ regularization under 100-EMP

dated 13.03.1996 was delayed for no fault of the petitioner and, therefore, he cannot be made to suffer for such delay by depriving him of pensionary benefits.

16. For the reasons indicated above we find that the petitioner is entitled to counting of his service rendered as a temporary employee, immediately prior to his absorption/regularization for the purposes of qualifying service.

17. We, therefore, direct that the so much of the petitioner's service rendered as a temporary employee from 1976, be added to the petitioner's service post-absorption in the establishment so that he fulfils minimum requisite ten years' qualifying service for grant of pensionary benefits.

18. The authorities should thereafter proceed to grant the pensionary benefit to the petitioner along with arrears with effect from the date, which he attained superannuation (31.01.2015).

19. The entire dues admissible to the petition in terms of this order be paid to him within a period of 8 weeks from the date of receipt of a copy of this order before the respondent authorities.

20. The learned Counsel for the petitioner at this juncture makes a prayer for interest on the dues. Having regard to the nature of adjudication and determination of the petitioner's rights in the present proceedings, we do not find it a fit case for award of any interest.

21. The prayer for interest is rejected.

22. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)