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10.11.2025
Ct. No. 11
rrc

MAT 1561 of 2025
with
IA No. CAN 1 of 2025
and
IA No. CAN 2 of 2025
(Ramsankar Giri Vs. The State of West Bengal & Ors.)

Mr. Ujjal Ray
Sk. Abdur Rahim
.... For the appellant

Mr. Ratul Biswas
Ms. Dipa Bhattacharya
.... For the State

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
..... For the W.B.C.S.S.C.

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

The present appeal has been preferred challenging a judgment dated 17th July, 2025 passed in a writ petition being WPA No. 13647 of 2025.

In connection with the appeal, an application for condonation of delay being CAN 1 of 2025 has been preferred.

Upon hearing the learned advocates appearing for the respective parties and considering the materials on record, we are satisfied with the explanation offered towards the delay in preferring the appeal.

Accordingly, such delay is condoned and the application being CAN 1 of 2025 is disposed of.

The essential facts that need to be narrated for effective adjudication of the appeal are that the appellant had participated in the selection process conducted for appointment to the post of Assistant Teacher at the upper primary level. He was declared successful and was accordingly recommended for appointment to Krishnagar High School, South 24 Parganas (hereinafter referred to as *the school*), by the Chairman of the West Bengal School Service Commission (hereinafter *the Commission*), vide memo dated 21st November, 2024, against the 42nd post in the 100-point roster.

Pursuant thereto, the appellant reported to the school for joining; however, he was not permitted to do so as the 42nd post stood reserved for a differently-abled candidate. Subsequently, the Chairman of the Commission issued a corrigendum on 9th January, 2025, clarifying that the post for which the appellant had been recommended would be treated as the 48th post in place of the 42nd post. In terms of the said corrigendum, the appellant was allowed to join the school on 21st January, 2025, and his appointment was thereafter approved by the District Inspector of Schools (S.E.), South 24 Parganas vide memo dated 7th February, 2025.

Upon joining, the appellant submitted a representation requesting 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:

‘From the steps taken by the Commission as emanates from corrigendum dated 9th January, 2025 it is found that it is not a case of

mala fide rather on intimation being made by said school authority by issuing corrigendum dated 9th January, 2025 petitioner was permitted to join the post of Assistant Teacher i.e. 48th post and petitioner joined on 21st 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 21st November, 2024 is missed, same needs to be treated under fortuitous circumstances.'

Mr. Ujjal Ray, learned advocate appearing for the appellant, submits that had the appellant been allowed to join the post in terms of the initial recommendation letter dated 21st November, 2024, he would have completed more than six months of service prior to 1st July, 2025. Consequently, he would have become entitled to the benefit of an increment with effect from 1st July, 2025, in terms of Rule 10 of the said notification.

He argues that the delay in the appellant's joining cannot be attributed to the appellant, and therefore, for no fault of his own, he cannot be denied the incremental benefits. However, the Court erroneously proceeded on the basis that, since the appellant could not establish any mala fide on the part of the authorities, he was not entitled to the reliefs prayed for.

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. Biswas, learned advocate, assisted by Mr. Panda, learned advocate appearing for the State respondents 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 21st 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 21st January, 2025 and approval of such appointment on 4th March, 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 joints 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 21st 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 21st 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, 2025.

With the above observations and directions, the appeal and the connected application for appropriate order being CAN 2 of 2025 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.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)