

**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. 210 of 2024

Dr. Satinath Samanta

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Chitta Ranjan Chakraborty,
Mr. Sumit Banerjee,
Ms. Puspa Rani Jaiswara.

For the State : Mr. Tapan Kr. Mukherjee, Ld. AGP,
Ms. Sangeeta Roy.

Judgment on : April 17, 2025.

Madhuresh Prasad, J.:

1. The petitioner was the applicant before the West Bengal Administrative Tribunal. He assailed the order rejecting his claim for pension in O.A. No. 810 of 2023. The West Bengal Administrative Tribunal ("SAT" for short) by its order dated 2nd September, 2024 has rejected the petitioner's Original Application upholding the rejection order.
2. The petitioner working as a medical officer in the Calcutta Homeopathic Medical College and Hospital ("college" for short) is seeking benefit of pension which has been declined by the

authorities by an order dated 13th October, 2023 by assigning a reason that the petitioner did not fulfil the requisite qualifying service for the purposes of grant of pension. Since the petitioner was appointed on 17th May, 2010 and retired on 31st December, 2018 the petitioner was having only 8 years 7 months and 15 days of service as a State Government employee. Since the same was less than 10 years he did not qualify for the minimum pensionary benefits after superannuation. While rejecting the applicant's claim the Director of Homeopathy, Government of West Bengal, in the impugned order has recorded the retiral benefits paid to the petitioner. It is not in dispute that petitioner has been paid the following:

- i. GPF : Rs. 11,84,790/- Dated 29/01/2019**
- ii. Gratuity : Rs. 6,00,000/- Dated 15/03/2019**
- iii. Leave Salary : Rs. 6,17,715/- Dated 24/04/2019**
- iv. GIS : Rs. 7,847/- Dated 02/09/2019**

3. The brief factual background relevant for the present case is that the petitioner was appointed in the college on 15th October, 1981. The State Legislature with a view to promoting public health "enacted" the Calcutta Homeopathic Medical College and Hospital (taking over of management and subsequent acquisition) Act, 1983 ("1983 Act" for brevity). The enactment was made to provide initially for taking over the management; and subsequent acquisition of the college wherein the petitioner was serving. Section 4(iv) of the Act reads as follows:

"4. Acquisition of the institution.-

(iv) every person (not being a part-time or over-aged employee) who has been an employee of the institution before the date of vesting shall, on and from, the date of vesting, become an employee of the State Government and shall hold office on the same terms and conditions as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the State Government is duly terminated or until the terms and conditions of this service are duly altered by the State Government by rules made in this behalf:

Provided that the services of every person who expresses his unwillingness to continue in service in terms of the provisions of this clause shall stand terminated with effect from the date of vesting or from any other date to be notified by him;"

4. It is an admitted position that management of the college was taken over under the earlier ordinance with effect from 27.12.1982 and the college was taken over completely on 2nd January, 1992.
5. One Dr. Prasanta Das and Ors. also working in the same college had moved this Court by filing a writ petition wherein this Court passed an order on 1st September, 1986 recording an agreement between the petitioner and the respondents that the petitioners therein were being absorbed. The writ petition was accordingly disposed of directing for payment of their salary in accordance with scales fixed by the State Government and for issuing formal orders of absorption.
6. The present petitioner also approached this Court in a writ proceedings bearing number C.O. 9278 (W) of 1988 claiming his

regularization in the college. The writ Court by its order dated 12th September, 1997 took notice of the fact that the petitioner's claim was pending before the authorities since 1988. This Court thus directed to dispose of the petitioner's pending representation.

7. The authorities however did not issue any order regularizing or absorbing the petitioner as a Government employee. He thus was compelled to approach this Court again after exhausting his remedy before the State Administrative Tribunal. He thus filed a second writ petition bearing W.P.S.T. No. 803 of 2001. The Division Bench took note of the fact that the respondents did not dispute the similarity of the petitioner's case with that of Dr. Prasanta Das and Ors. Having taken note of such a situation, this Court issued a direction on 22nd February, 2005 upon the respondent authorities to absorb the petitioner against the next available vacancy in the post of Medical Officer in the college. The Court held that he would be entitled to all consequential benefits. The writ petition was accordingly disposed of.

8. In spite of such order being passed in petitioner's favour the authorities did not issue any order absorbing the petitioner as a State Government employee in the college. The petitioner was thus compelled to file contempt application before this Court. It was only after orders were passed in the contempt proceedings arising out of W.P.C.R.C. 56(W) of 2008 that the respondents diverted a vacancy which was existing in the State cadre so as to appoint the petitioner

by way of absorption in the college as a State Government employee. The order to this effect was issued on 20th April, 2010, more than 5 years after the order passed in W.P.S.T. No. 803 of 2001. This order, however, was not a signed order and did not contemplate grant of retrospectivity. The petitioner raised such grievance before the Court in the pending contempt proceedings which is apparent from the order dated 14th May, 2010 passed therein. Taking note of such grievance raised by the petitioner the Contempt Court directed the petitioner to join the post in compliance with the appointment order dated 20th April, 2010. In so far as his claim for retrospectivity is concerned, the Court recorded that the joining would be without prejudice to the petitioner's rights and contentions and that the petitioner would be at liberty to raise this point at the appropriate stage.

9. The petitioner after his joining has been considered as a State Government employee. However, after his retirement on 31st December, 2018, the petitioner was not given the benefit of pension. It is under such circumstances that he again approached the SAT by filing O.A. No. 510 of 2020. Pursuant to orders passed therein the authorities have considered the writ petitioner's claim and passed the order dated 13th October, 2023 rejecting his claim. The same has been assailed by the petitioner in O.A. No. 810 of 2023 which was rejected, bringing the petitioner before this Court in the present proceedings.

10. The learned counsel for the petitioner submits that rejection of petitioner's claim for pensionary benefits is unsustainable in the eyes of law. In view of the provisions contained in the 1983 Act the petitioner who was earlier already working as Medical Officer in the college became a State Government employee from the date of vesting of the college, that is the date of acquisition on 2nd January, 1992. Therefore, there can be no justification not to consider the period after 2nd January, 1992 to be a period liable to be counted as qualifying service for the purpose of grant of pension. He further submits that he has been pursuing the issue since 1988. After several round of litigation when the final order was passed in 2005 in W.P.S.T. No. 803 of 2001, then also, respondents have taken another 5 years to issue the order of appointment. Even if this 5 years period of delay is to be considered as qualifying service, then the petitioner would very well cross the 10 years requisite qualifying service for the purposes of grant of pension.

11. The learned AGP, Mr. Mukherjee on the other hand submits that the appointment order was issued in 2010. If at all the petitioner was aggrieved by the fact that it did not entitle the petitioner to any retrospectivity based on which he could claim qualifying service for pension, he was required to assail the same diligently which he has not done. He has procrastinated in the matter and, therefore, the relief that he prays for should not be granted. He further submits that the petitioner has already accepted

the various retiral dues including the double gratuity in lieu of pension. Since he has accepted these benefits he cannot now be permitted to raise the issue regarding grant of pension.

12. The fact that the petitioner has received double gratuity is disputed by the learned counsel for the petitioner referring to the reasoned order dated 13th October, 2023. He points out that the same only shows receipt of gratuity and no double gratuity has been received by the petitioner.

13. Considering the rival submissions and on going through the records we find that the petitioner has been pursuing his claim for being absorbed/ appointed as a State Government employee in the college in terms of the 1983 Act since the year 1988, when he filed the first writ petition bearing No. C.O. No. 9278 (W) of 1988. Wherein this Court directed for considering his claim, which was not done. The second round of litigation before the SAT gave rise to second writ petition bearing W.P.S.T. No. 803 of 2001. In the said proceedings this Court found the petitioner's claim to be similar to that of Dr. Prasanta Das and Ors. Dr. Prasanta Das and Ors. Who had filed a writ petition earlier wherein those petitioners were directed to be paid their salary in accordance with scales fixed by the State Government and for issuance of formal orders of their absorption. The direction was based on an agreement between the parties.

14. It is in this circumstance that this Court in W.P.S.T. No. 803 of 2001 directed the respondents to absorb the petitioner against the next available vacancy. This Court further held the petitioner to be entitled to all consequential benefits. The order passed in W.P.S.T. No. 803 of 2001 was never assailed by the respondents in any proceedings. Therefore, the finding of the writ Court that the petitioner was similarly situated at Dr. Prasanta Das and Ors., is binding *inter partes* till date. It is on such premise that this Court directed on 22.02.2005 in W.P.S.T. No. 803 of 2001 to absorb the petitioner against the next available vacancy on the post of Medical Officer in the college, with consequential benefits. The right of the petitioner for being absorbed under the 1983 Act, at par with Dr. Prasanta Das and Ors., therefore, crystalized on 22.02.2005 when this Court passed orders in writ proceedings arising out of W.P.S.T. No. 803 of 2001, in favour of the petitioner.

15. Even after passing of such an order the State took another 5 years to divert a post from the State cadre on which the petitioner was appointed by way of absorption in the college, as a State Government employee. Even at this stage when the appointment order was issued the petitioner diligently claimed retrospectivity. The claim of the petitioner regards retrospectivity was considered by this Court in the contempt proceedings arising out of W.P.C.R.C. No. 56(W) of 2008. This Court taking note of such submission directed the petitioner to join the post in compliance with the appointment

order dated 20.04.2010 reserving his liberty to raise the issue at the appropriate stage. This Court explicitly recorded that joining of the petitioner would be without prejudice to the rights and contentions of the petitioners.

16. From the above noted facts and circumstance, which are not in dispute we find that there is no lack of diligence on the part of the petitioner, much less there being any waiver or acquiescence by conduct, on his part. The petitioner has continuously been pursuing the issue of his absorption under the provisions of the 1983 Act and grant of consequential benefits. His claim for pension based on retrospectivity has finally been rejected by the authorities by an order dated 13.10.2023. It is this order which has been assailed in O.A. No. 810 of 2023.

17. Given the above noted facts and circumstances we find no force in submission of the learned AGP that the petitioner's approach to the Tribunal is belated or suffers from any delay or latches. On the contrary, we find that the petitioner's right had crystalized long back on 22.02.2005. Even after crystallization of his rights for being appointed on 22.02.2005 the respondents have taken another 5 years for appointing him by way of absorption as per mandate contained under the 1983 Act. It would be relevant to take note of the fact here that the order dated 14.05.2010 passed in the contempt proceedings arising out of W.P.C.R.C. No. 56 of 2008 reserved the petitioner's liberty to claim retrospectivity and

consequential benefits. In the earlier order passed in the writ proceedings (WPST 803 of 2001) this Court found the petitioner's claim to be at par with Dr. Prasanta Das and Ors.

18. Specific direction for appointing the petitioner was also issued on 22.02.2005. Since the authorities have taken 5 years to comply with these directions, the petitioner cannot be made to suffer for such lapse and delay on the part of the respondents. The plea of the petitioners approach to the Court being belated, therefore, does not lie in the mouth of the respondents. The petitioner is at least entitled to counting of the period after 22.02.2005 for the purposes of qualifying service. Having recorded so, we also record the settled legal position that the petitioner would not be in a position to claim any wages for the period in between 22.02.2005 till 20.04.2010, i.e. the date on which the appointment order was issued, on the principle of no work no pay. He, however, cannot be deprived of this period for the purpose of qualifying service. Sustaining such a deprivation would amount of saddling the petitioner with civil consequences such as deprivation of minimum pensionary benefit, for the fault/ delay on the part of the respondents. The law does not permit the same.

19. The law in this regard stands settled. In this connection we consider it profitable to refer to decision of the Apex Court in the case of ***Kusheshwar Prasad Singh v. State of Bihar*** reported in **(2007) 11 SCC 447** wherein the Apex Court has held that it is a

settled principle of law that one cannot be permitted to take undue and unfair advantage of one's own wrong. He who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. The Apex Court has succinctly stated that a wrong doer ought not to be permitted to make a profit out of his own wrong. In the present case, we find that the shortage of qualifying service for the purposes of grant of pension to the applicant/petitioner is 1 year 4 months and 15 days. It is this deficiency in qualifying service which is being made the basis to deny the petitioner benefit of pension. We have considered above the fact that the respondent authorities in spite of a specific directions issued in the earlier writ petition (WPST 803 of 2001), to absorb the petitioner, have delayed compliance of the same by more than 5 years. They have finally issued the appointment/ absorption order of 20.04.2010. The respondents, therefore, cannot be permitted to rely on such non-performance on their part to justify the non-grant of pension to the petitioner. The delay in petitioner's appointment in between 22.02.2005 to 20.04.2010 is attributable to the respondent authorities. They have committed a wrong in the said period by not complying with the Court's direction. In view of the settled legal position based on decision of the Apex Court in the case of **Kusheshwar Prasad Singh** (supra) we find that it does not lie in the mouth of the respondent to content that the petitioner cannot be permitted to claim benefit of this period in between 22.02.2005 to

20.04.2010 as a qualifying service for the purposes of grant of pension.

20. We, therefore, find it a fit case where a direction to be issued to the respondent authorities for counting the period between 22.02.2005 to 20.04.2010 as qualifying service. By adding the same to the service post 20.04.2010, till his superannuation the respondent authorities should consider the petitioner's claim for minimum pensionary benefits. The consequential dues as a result thereof must be paid to the petitioner within a period of 8 weeks from the date of receipts/ production of a copy of this order. While making payment the authority should ensure that the petitioner is provided details of calculation of the amount being paid to the petitioner, for the sake of transparency. The Tribunal's order dated 02.09.2024, passed in O.A. No. 810 of 2023 rejecting the petitioner's claim for pensionary benefits, is thus unsustainable. We set aside the same.

21. The writ petition is allowed in the above terms.

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.)