

10th June, 2025
(D/L No.14)
Ct. No.4
(SKB)

W.P.S.T.230 of 2024
With
CAN 1 of 2025

Mihir Kumar Jatua and another
Versus
State of West Bengal and others

Mr. Biswarup Biswas,
Mr. Pradip Kumar Ghosh,
Ms. Nupur Chaudhuri
... for the petitioners.

Mr. Tapan Kr. Mukherjee, ld. AGP,
Mr. Somnath Naskar
....for the State.

Mr. Sourav Mondal
... for the Principal Accountant General.

1. The two writ petitioners have been deprived of pensionary benefits on the ground that they do not have the requisite qualifying service for grant of pension.
2. The factual position not in dispute is that based on the date of their appointment, the petitioner no.1 has completed 9 years 4 months and 13 days, whereas the petitioner no.2 has completed 7 years 2 months 2 days. Thus, there is a deficiency in service tenure of both the applicants/petitioners as they do not possess the requisite ten(10) years qualifying service for grant of pension.

3. However, it is the petitioners' case that there has been an inordinate delay in their recruitment process, which could not be attributed to the petitioners. The petitioners, thus, cannot be made to suffer the consequences of such delay on part of the State authorities. If the period of delay, in between 2006 to 2009 is added to the petitioners' service only for the purposes of qualifying service, their services would become pensionable.
4. It is submitted that even at the time of appointment on 18.03.2009, the authorities have acknowledged their lapse in terms of the delay caused in the recruitment process. They have accordingly given a relaxation in the upper age criteria for appointment and condoned the upper age criteria. It, therefore, does not lie in the mouth of the respondents to take a stand contrary thereto, and deprive the petitioners' pensionary benefits.
5. In this regard, the petitioners have approached the West Bengal Administrative Tribunal twice. The first O.A.258 of 1995 filed by the petitioners was disposed of directing the respondent to pass a reasoned order on the petitioners' claim.

6. The same, however, was not complied with and the petitioners kept pursuing the matter and another O.A. bearing O.A. No.69 of 2024 was filed by the petitioners as a desperate measure to get a final adjudication of this issue. They were claiming that having regard to the delay in recruitment process, their services should be counted from a date anterior to the date of their belated appointment so that they may qualify for and be able to avail the pensionary benefits.
7. The Tribunal again directed the respondent authorities to take a decision in this regard after due consideration. The petitioners filed the present writ petition and it is submitted that the Tribunal has relegated its jurisdiction and authority to the State authorities rather than deciding the issue itself.
8. It is vehemently submitted by the learned counsel for the petitioners that it was the duty of the Tribunal to consider the case on its merits and decide the claim of the petitioners, which the Tribunal has failed to do in the present case.
9. However, it is apparent from the records including the CAN 1 of 2025 filed by the petitioners that there is a relevant development subsequent to filing of the writ petition. The authorities have

taken a decision pursuant to the order of the Tribunal in the first O.A, by an order dated 22.01.2025. The order is passed by Secretary to the Government of West Bengal in the Finance Department. The petitioners' claim has been rejected.

10. It is submitted by the learned counsel for the petitioners that the order of the Secretary is unsustainable and is based on a perverse consideration of the petitioners' claim. The petitioners were not claiming only a condonation. It is the specific claim of the petitioners that they have been deprived of their appointment at the due time. The delay in issuance of the appointment letter was, therefore, required to be considered and added to the petitioners' service tenure, by the authorities while calculating the petitioners' qualifying service only for the purposes of pension. It is submitted that this aspect of the matter has not been considered by the Secretary in the order dated 22.01.2025.
11. The learned AGP submits that the order dated 22.01.2025 passed by the Secretary to the Government of West Bengal is giving rise to a fresh cause of action. Referring to decision of the Apex Court in the case of **L. Chandra Kumar Vs.**

Union of India and others reported in **(1997)3 SCC 261** in paragraph 99 thereof, he submits that whatever be the petitioners' claim, it is required to be agitated firstly before the Tribunal which, according to the decision of the Apex Court, continues to be the court of first instance. In support of such contention, he has also referred to a decision of the Apex Court in the case of ***Rajeev Kumar and Another Vs. Hemraj Singh Chauhan and others*** reported in **(2010)4 SCC 554**.

12. The learned counsel for the petitioners has tried to distinguish the decision of the Apex Court in the case of ***Rajeev Kumar*** (*supra*) by submitting that in that case the petitioners had directly approached this court though they were not parties to the original application and it is in that factual background that the Apex Court held that the High Court ought not to have considered their claim.

13. Having considered the rival submissions, we find that an order dated 22.01.2025 has been issued by the Secretary in compliance of the order passed by the West Bengal Administrative Tribunal on the petitioners' earlier O.A. No.258 of 2019. By this order petitioners' claim has been

rejected. It is now this order which forms the basis of petitioners' deprivation and which is required to be considered in appropriate proceedings. Since the order gives rise to a fresh cause of action, in view of decision in the case of **L. Chandra Kumar** (supra) declaring the Tribunal as the court of first instance, we are of the view that the petitioners are required to approach the Tribunal, assailing the order, if so advised.

14. With such liberty, we dispose of the writ petition. We make it clear that the observations recorded above shall have no persuasive value either way.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)