

10.04.2025
Item No.12
Court No.1.
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**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

**MAT 10 of 2025
I.A. No. CAN 2 of 2025**

**The State of West Bengal & Ors.
Vs
Paresh Chandra Ray Eashor.**

Mr. Subir Kr. Saha,
Mr. Momenur Rahman,
Mr. Bikash Singha, ...for the appellants/State.

Mr. Debarata Karan,
Mr. Debapriyo Karan,
Ms. Sabita Khutia,
Mr. D. Kundu,
Ms. R. Ghosh
...for the respondent/O.P.No.1.

Order dictated by Arijit Banerjee, J.

1. A judgment and order dated October 1, 2024, passed by a learned Judge of this Court, whereby the writ petition of the respondent no.1 herein being WPA 2193 of 2024 was, in effect, allowed, is under challenge in this appeal filed by the State of West Bengal and some of its officers.
2. The brief facts of the case are that in the year 1986, the State Government decided to fill up vacant posts of Gram Shevak in the State of West Bengal. A common recruitment process was conducted. The candidates sat written examination and appeared for viva voce. Merit list was prepared. A Central panel was prepared and also district-wise panels were prepared.

This was challenged before the Court in 1989. A learned Single Judge set aside the district-wise panels and directed a fresh Central panel to be prepared.

3. The State Government accepted the said judgment and prepared a Central panel. At that time, there were 700 odd vacant posts.
4. Subsequently, a series of writ petitions were filed by empanelled candidates alleging discrimination and that appointments were being granted by the Government not on the basis of merit but by practising nepotism.
5. In one such writ petition being no. C.R. 12463(W) of 1993, a learned Judge once again directed the State to grant appointment from the Central panel on the basis of merit. By this time, the post of Gram Sevak came to be abolished and a new post of Gram Panchayat Secretary was introduced in the place and stead thereof.
6. The discrimination in granting appointment continued. A writ petition being W.P. 18620(W) of 2001 came to be filed. In that writ petition a learned Single Judge called for a report from the Secretary, Panchayat Department. Such report was filed. It was contended in that report that it had become difficult for the State Government

to adhere to the panel which had been prepared in connection with a selection process in the year 1986, since by 2001, most of the empanelled candidates had reached advanced age and it would be difficult for them to accept new appointment. Some of the candidates had already crossed 60 years being the age of superannuation.

7. The Government placed the matter for legal opinion before the Legal Remembrancer. His opinion was placed before the Hon'ble Minister-in-Charge who directed the concerned department to ignore the candidates who had crossed 50 years of age as on January 1, 2023.
8. The learned Judge who was still in seisin of the aforesaid writ petition being W.P. 18620(W) of 2001, disposed of the same observing that there was no scope for the State Government to fix such arbitrary cut-off date. The learned Judge directed the State Government to give appointment to the petitioners as they were superseded in the matter of appointment because of their advanced age.
9. Being aggrieved by that order, the State Government preferred an appeal being FMA 764 of 2005. By a judgment and order dated

January 17, 2007, the said appeal was disposed of with the following direction :

“We direct the State to consider all the empanelled candidates strictly in accordance with their merit by considering today’s date as a cut off date and if persons are found at least having 5 years service tenure from to-day, they must be given appointment as early as possible. The other persons who did not cross 50 years as on the date of the judgment in CR 12463(W) of 1993 being 13th August, 1998 are given liberty to approach the Civil Court for appropriate compensation against the State.”

10. In the mean time, appointment letter was issued in favour of the petitioner on February 5, 2004. His appointment as Gram Panchayat Secretary was made on April 5, 2004.
11. The petitioner retired upon attaining the age of superannuation on June 30, 2013. He had been in service for 9 years 4 months 25 days i.e. he was short of putting in 10 years service by 7 months 5 days. Therefore, he was denied pension.
12. The petitioner and other similarly circumstanced persons made representations to the competent authority. Having received no response, they approached a learned Judge of this Court by filing WPA 5349 of 2016. By a judgment and order dated December 16, 2022,

the learned Judge disposed of the writ petition with the following direction :

“The writ petition is disposed of with a direction upon the Joint Secretary to the Government of West Bengal, Department of Panchayats and Rural Development, to treat the writ petition as a representation of the petitioner and decide the question of condonation of the shortfall in his pensionable service, under the facts and circumstances narrated hereinabove especially when the cut off date had been fixed by the Division Bench. The petitioners will be entitled to be represented by a learned Advocate, before the authority.

Upon completion of the hearing, a reasoned order shall be passed and communicated with a period of three months from the date of communication of this orders.”

13. Pursuant to the said direction, the Additional Secretary to the Government of West Bengal, Panchayats and Rural Development Department, passed an order dated May 10, 2024, by rejecting the prayer of the writ petitioners for granting pension upon condonation of the shortfall in pensionable service. This order was challenged by the respondent no.1 herein by filing the present writ petition being WPA No.2193 of 2024.

14. The learned Single Judge held that the petitioner was in no way responsible for the

delay in issuance of appointment letter in his favour. Had the appointment letter been issued in usual course of the initiation of the recruitment process in or about the year 1986, the petitioner would have joined in service long prior to the year 2004 and would easily qualify for pension. Her Ladyship referred to various authorities wherein the Court allowed the petitioner's prayer for condonation of the shortfall in qualifying service period. Reference was made to a decision of a learned Judge rendered on August 5, 2024 in **WPA 10763 of 2023** as also the decision of a learned Judge in the case of **Bansi Badan Kole Vs. The State of West Bengal & Ors.** Finally, the learned Judge relied upon the Division Bench decision of this Court in the case of **Asim Kumar Chakrabarti Vs. the State of West Bengal & Ors. in W.P.S.T. 112 of 2019.** The learned Judge disposed of the writ petition with the following observations :

“The Court in Bansi Badan Kole (Supra) observed that not allowing the prayer of the petitioner for condoning the shortfall in his qualifying service period will amount of double jeopardy. Neither the petitioner received his salary for the period he did not work nor will he receive his pension after his retirement for no

fault of him. The petitioner ought not to be deprived of his legitimate claim to receive pension.

In line with the decisions referred to hereinabove, the impugned order rejecting the prayer of the petitioner seeking condonation of the shortfall in his qualifying service period is set aside.

The Block Development Officer, Ketugram-II Development Block, is directed to grant notional benefit to the petitioner by treating him to be in service for the qualifying period of ten years.

The aforesaid respondent is directed to proceed by processing the pension file of the petitioner and ensure that the petitioner receives his pension at the earliest but positively within a period of four months from the date of communication of this order.

It is made clear that the petitioner will not be entitled to salary for the period which he did not work and will also not be entitled to any interest for the delayed payment of pension. He will only get the benefit of ten years in service.”

15. Being aggrieved, the State of West Bengal is before us by way of this appeal.

16. Primarily, two points have been urged by the learned State advocate. Firstly, the writ petitioner ought to have approached the Administrative Tribunal before approaching this Court. Relying on the decision of the Hon’ble Supreme Court in the case of **L. Chandra Kumar Vs. Union of India (UOI) & Ors.**

reported in **AIR 1997 SC 1125**, learned counsel submitted that the High Court should not have been approached as a Court of first instance as laid down by the said Supreme Court decision. The petitioner should have filed an original application before the Tribunal. Had he been unsuccessful there, he could have approached a Division Bench of this Court.

17. Apart from the fact that this point does not appear to have been urged before the learned Single Judge, in the facts of this case, we do not think that the decision in **L. Chandra Kumar (Supra)** stood in the way of the writ petitioner approaching this Court by way of the instant writ petition. The writ petitioner challenged an order of the competent authority which was passed pursuant to an earlier direction of the writ Court. In any event, jurisdiction of the writ Court under Article 226 of the Constitution of India can never be ousted. It can never be contended that the learned Single Judge lacked inherent jurisdiction. We, therefore, reject the first contention of the appellants.

18. It was secondly argued that the State was not responsible for the delay in issuance of appointment letter to the petitioner. After

written and oral examinations were held in 1986, a spate of litigations were initiated which prevented the competent authority in the administration from issuing appointment letter. There was no laches on the part of the administration. As soon as it could, the competent authority issued letter of appointment in favour of the petitioner in 2004. Hence, the State cannot be faulted.

19. We are unable to accept this contention of the appellants also. The entire problem and complication was created by the State administration by preparing district wise panels parallelly with Central panel. Even thereafter when the Court directed the administration to give appointment to the concerned posts only from the Central panel on merit basis, the same was not followed. Litigations ensued alleging discrimination on the part of the administration. In fact, a co-ordinate Bench in its order dated January 17, 2017, referred to above, observed that the situation has arisen only because of laches on the part of the State administration. A Special Leave Petition preferred by the State against that order of the Division Bench, we are told, was dismissed for default in the year 2013.

20. Therefore, we are of the considered opinion that the petitioner is not to be blamed to any extent for the delayed issuance of appointment letter. Hence, his prayer for condonation of the shortfall in pensionable service period deserved to be allowed. Not allowing such prayer of the petitioner will be causing him double jeopardy as has been observed rightly by the learned Single Judge. The State, which professes to be a welfare State, should take a reasonable stand in the interest of the citizens.

21. We see no apparent infirmity in the judgment and order sought to be assailed by us. Consequently, this appeal being MAT 10, 2025, fails and the same is hereby dismissed along with the c

22. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Biswaroop Chowdhury, J.)

(Arijit Banerjee, J.)