

S/L 17
03.01.2025
Court. No. 3
Sourav

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

WPA 2670 of 2024

**Shiva Kumar Tamang
Vs.
The State of West Bengal & Ors.**

Mr. Debajit Kundu

...for the petitioner.

*Mr. Nabankur Paul
Mr. Pradip Sarkar*

...for the State.

1. The affidavit-of-service as filed in Court today is taken on record.
2. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner has prayed for issuance of appropriate writ commanding the respondent nos. 2 to 5 to grant and disburse pension in favour of the petitioner after condoning the shortfall period of service.
3. On perusal of the entire materials as placed before this Court, it reveals that it is the case of the writ petitioner that pursuant to a written examination and interview as conducted by the Darjeeling Gorkha Hill Council for the appointment of primary teacher, the writ petitioner was appointed in the post of primary teacher on 18.02.2013 in Pussimbing T.E. Primary School and on 08.03.2013 the writ petitioner joined the said school.
4. It is the further case of the writ petitioner that on 30.06.2022, the writ petitioner retired from service on attaining his age of superannuation and he was in

service for 9 years 3 months 24 days. It is the further case of the writ petitioner that after receiving the PPO from the Additional Treasury Officer, Darjeeling, it has been noticed by the writ petitioner that he was granted the retiral benefit of gratuity only and no order for payment of pension was granted basically on the ground of shortage of requisite number of days of qualifying service.

5. In course of his argument, learned advocate for the writ petitioner submits before this Court that though the written examination and the interview of the writ petitioner was taken in the year 2002 by the Darjeeling Gorkha Hill Council, but the appointment letter to the writ petitioner was issued in the year 2013 i.e., almost after 11 years and for the said delay, no fault can be attributed to the writ petitioner. It is contended further that had the appointment letter was issued in proper time, the writ petitioner could have retired with qualifying period of service. It is thus submitted on behalf of the writ petitioner that the writ petitioner should not be deprived of his right of getting pension for no fault of his own.
6. In course of his submission, learned advocate for the writ petitioner further submits before this Court that by an order dated 20.08.2024 as passed in WPA 20651 of 2024, a co-ordinate Bench of this court in a similar case directed for release of pension of the writ petitioner of the said case.

7. It is thus submitted on behalf of the writ petitioner that an appropriate order may be issued by directing the respondent authorities to release the pension of the writ petitioner forthwith.
8. Such prayer is, however, opposed on behalf of the State. It is submitted that the writ petitioner's prayer cannot be considered favourably by the respondent authorities since the writ petitioner had not completed qualifying period of service for obtaining pension. It is further submitted that the proposition of law as laid down in the judgment dated 20.08.2024 as passed in WPA 20651 of 2024 as has been annexed with the instant writ petition at page nos. 18 to 20 is different from the facts and circumstances of the instant case.
9. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that admittedly, the writ petitioner participated in the written examination and the interview in the year 2002. For some reasons or other, the appointment letter was issued to the writ petitioner on 18.02.2013 and pursuant to such appointment letter, the writ petitioner joined on 08.03.2013 as a primary teacher in the said school. Admittedly, the writ petitioner retired from service on 30.06.2022 and, therefore, the writ petitioner had no qualifying

period of service for obtaining pension as per the prevailing Rules.

10. However, considering the fact that while disposing WPA 20651 of 2024, a co-ordinate Bench of this Court has directed for condoning the shortfall of the qualifying service period, this Court proposes to dispose of the instant writ petition in the manner indicated hereunder.
11. It is directed that the respondent no. 5 shall consider the instant writ petition as a representation of the writ petitioner and after giving an opportunity of hearing to the writ petitioner and/or to his learned advocate shall dispose of the said representation by passing a reasoned order in the light of the observation made by a co-ordinate Bench on 20.08.2024 in WPA 20651 of 2024 in accordance with law and shall communicate its decision to the writ petitioner forthwith after passing of the said reasoned order.
12. It is further ordered that the entire process as indicated hereinabove is to be completed within three months from the date of communication of this order.
13. Learned advocate for the respondents/State is hereby requested to communicate the server copy of this order to the respondent no. 5 preferably within a week from today. Similar liberty is given to the learned advocate for the writ petitioner to

communicate the server copy of this order to the respondent no. 5.

14. The respondent no. 5 is directed to act on the server copy of this order.
15. With the aforementioned observations, the instant writ petition being **WPA 2670 of 2024** is hereby disposed of.
16. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)