

2
18.03.2026
Ct No.11
rrc

MAT 23 of 2026
with
IA No. CAN 2 of 2026
(The State of West Bengal & Ors. Vs. Biplab Goswami & Ors.)

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
... For the appellants

Mr. Ujjal Ray
**..... For the respondent/
writ petitioner**

The present appeal has been preferred by the State and its functionaries challenging the judgment dated 24th January, 2025 passed by the learned single Judge in the writ petition being WPA 259 of 2019 which was preferred by the writ petitioner, namely, Biplab Goswami (in short, Biplab) primarily praying for issuance of necessary direction upon the respondents to '*confirm his service continuation from 10.11.2005 with fixational benefits from 1.1.2006 of the petitioner with arrear with interest (rate of interest) within 60 days/90 days etc herein*'. Upon contested hearing, the said writ petition was disposed of with the following directions:

'(i) the petitioner's break in service for 8 days, shall be condoned;

(ii) the past service period of the petitioner shall be treated as the qualifying service of him, for the purpose of granting service benefits including pension to the petitioner;

(iii) necessary orders in this regard shall be passed by the respondent No.2/the Joint Secretary, Secondary Education Department, Government of West Bengal

within a period of 4 weeks from the date of communication of copy of this judgment.'

Mr. Chattopadhyay, learned advocate appearing for the appellants argues that the learned single Judge while treating the period of temporary service rendered by Biplab, as approved with effect from 10th November, 2005, to count towards pensionary benefits on the basis of the pension scheme erroneously directed the respondents to grant all service benefits to Biplab treating him to be in regular service with effect from 10th November, 2005. Admittedly, Biplab was not in regular service with effect from 10th November, 2005 till 23rd March, 2006 and there was also a break in his service since he was approved in a regular post only with effect from 1st April, 2006. Such issue, as urged, was glossed over by the learned single Judge and no specific finding was returned on the same. Such infirmity warrants interference in appeal.

He further submits that Biplab in support of his claim has placed reliance upon a notification dated 15th February, 1995 which specifically excludes a period of temporary service rendered by an incumbent towards grant of benefit pertaining to 18 years' continuous service in the same post.

Mr. Ray, learned advocate appearing for Biplab submits that Biplab is not claiming any benefit pertaining to 18 years' continuous service in the same

post as had been specifically excluded by the notification dated 15th February, 1995. However, in the said notification dated 15th February, 1995 there no specific clause towards denial of annual incremental and fixational benefits which accrue upon condonation of break in service and as such, there can be no hindrance towards grant of such benefits to Biplab with effect from the date of approval of his temporary service.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The following facts are not in dispute. Biplab was initially appointed in a lien vacancy pertaining to a period from 28th March, 2005 to 23rd March, 2006 in Ghoramara Milan Vidyapith and such temporary service was duly approved with effect from 10th November, 2005 by the competent authority *vide* memo dated 5th December, 2005. In the midst thereof, Biplab participated in a selection process conducted by the West Bengal Central School Service Commission and emerged to be successful in the same. Accordingly, he was issued a letter of recommendation on 8th March, 2006 and pursuant thereto, he joined Bankimnagar Adarsha Vidyapith and Biplab's service in a regular post was approved with effect from 1st April, 2006 i.e., 8 days after expiry of the tenure of the lien vacancy on 23rd March, 2006.

Thereafter, Biplab approached the authorities to condone such break in service with fixational benefits since for the delay towards issuance of letter of appointment was not attributable to him. However, the competent authority did not take any decision. Aggrieved thereby, Biplab had to approach the Court.

A perusal of the judgment impugned would reveal that the learned single Judge on the basis of the government notification no. 136-Edn (B) dated 15th May, 1985 directed that Biplab's break in service for 8 days in the midst of approved temporary service till 23rd March, 2006 and regular service with effect from 1st April, 2006 shall be condoned by the authorities and the entire period of service on and from 10th November, 2005 shall be counted for the purpose of granting service benefits including pension.

We do not find any infirmity in such direction towards condonation of break in service and the direction to treat the past service period as qualifying service for the purpose of pension inasmuch as the notification dated 15th May, 1985 categorically provides, *inter alia*, that '*condonation for a break-in-service not exceeding 12 months, occurring after the promulgation of the aforesaid Rules, is not necessary and that service prior to such a break shall automatically count towards pension*'.

In the said notification, there is, however, no provision towards grant of other service benefits

including annual increment and the benefit pertaining to 18 years' continuous service in the same post. The said issue does not appear to have been considered by the learned single Judge while issuing a direction towards grant of incremental and other service benefits pertaining to the past service. It is customary in writ jurisdiction, the writ Court would at the first instance, ordinarily not do the thing or render the decision that the executive functionary ought to do in the circumstances.

In view thereof, such direction upon the appellants to grant other service benefits to Biplab treating his past service as qualifying service is not sustainable in law and is, accordingly set aside.

We, however, grant liberty to Biplab to file a comprehensive representation claiming the grant of annual increment and fixational benefits in view of condonation of break in service before the competent authority for consideration, in accordance with law.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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