

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(APPELLATE SIDE)

FMA/1212/2015

(IN MAT/684/2014)

SRI SRIHARI CHARAN PATRA

VS

STATE OF WEST BENGAL & ORS.

Before:

The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. T.P. Halder, Adv.

For the State : Mr. S.K. Halder, adv.
Mr. K.M. Hossain, Adv.

For Orders on : 22.05.2026

Arijit Banerjee, J. :-

1. Under challenge in this appeal is a judgment and order dated June 3, 2013, whereby the appellant's writ petition being WP 11100(W) of 2013, was, in effect, dismissed by a learned Judge of this Court. The order impugned is a short one and is reproduced hereunder: -

"Affidavit of service filed today be kept on record.

In the writ petition the petitioner, who was appointed as casual worker on 3rd October, 1989 in Kalindi Gram Panchayat under Ramnagar-II Development Block, Purba Medinipur and who was appointed

temporarily as Gram Panchayat Karmee of Kalindi Gram Panchayat in the year 2004 and had retired on 31st May, 2010, has prayed for a direction upon the State authorities to grant pension in view of the memorandum dated 2nd July, 1997 issued by the Principal Secretary to the Government of West Bengal since he had rendered continuous and uninterrupted service since 3rd October, 1989.

Heard learned Advocates for the parties. The principal grievance of the petitioner is that his case for grant of pension has not been considered in the light of the memorandum dated 2nd July, 1997 as he had rendered continuous service since October, 1989. I find that the memorandum dated 2nd July, 1997 is inapplicable as it specifically deals with regard to the regularisation in the posts of Dafadars and Chowkidars. Since it is evident from the writ petition that the petitioner was neither a Dafadar nor a Chowkidar, no order is passed on the writ petition. The writ petition is disposed of.

No order as to costs.”

2. The appellant claims that he was initially appointed as a casual worker under Kalindi Gram Panchayat as per resolution dated September 19, 1989, passed by the General Body of the said Panchayat. The Pradhan of the said Gram Panchayat issued appointment letter on September 30, 1989.

3. Thereafter, according to the appellant, in November, 2000, the concerned Block Development Officer issued a letter dated November 30, 2000, addressed to the District Panchayat and Rural Development Officer, Midnapore, for regularisation of the appellant's service.

- 4.** The appellant was appointed as a Gram Panchayat Karmee under Kalindi Gram Panchayat on September 7, 2004.
- 5.** The appellant was due to retire upon attaining the age of superannuation on May 31, 2010. On February 18, 2010, he submitted a prayer before the concerned Block Development Officer for taking into consideration, the past service rendered by him as a casual worker since October 3, 1989, for the purpose of computation of his pensionary benefits. In spite of receipt of the said letter, the Block Development Officer did not respond thereto.
- 6.** After retirement, the appellant sent a representation to the Secretary, Panchayat and Gram Unnayan Department, Government of West Bengal on July 22, 2010, for releasing his retirement benefits by taking into consideration his past service rendered for the period October 3, 1989 to September 6, 2004.
- 7.** A similar representation was made on September 6, 2011, addressed to the Commissioner, Panchayat and Rural Department, Government of West Bengal.
- 8.** None of the aforesaid representations yielded any result.
- 9.** The appellant says that a Memo was issued by the Principal Secretary, Government of West Bengal on July 2, 1997, to the effect that past service rendered by all Dafadars/Chowkidars prior to their absorption as Gram Panchayat Karmee will be taken into account towards calculation of their retiral benefits including pension.
- 10.** Challenging the refusal of the respondent authorities to take into consideration the appellant's past service rendered as a casual worker between October 3, 1989 and September 6, 2004, for the purpose of computing his retiral benefits, the appellant approached a learned Judge of this Court by filing W.P. No. 11101 (W) of 2013. By a judgment and order dated June 3, 2013, the learned Single Judge dismissed the appellant's writ petition. Hence, this appeal.

11. Learned Advocate for the appellant submitted that since the appellant served for about 6 years as Gram Panchayat Karmee, in terms of the relevant Death-cum-Retirement Benefits Scheme, the appellant is not entitled to receive pension as he rendered less than 10 years of service. However, if his past service as casual staff for the period October 3, 1989 to September 6, 2004 is taken into account, the total period of service rendered by him will be 20 years 7 months 29 days. He would then become entitled to receive pension.

12. Learned Counsel argued that since Dafadars and Chowkidars are entitled to have their services rendered as Casual Staff prior to absorption as Gram Panchayat Karmee, considered for the purpose of computation of their retiral benefits, by reason of the memo dated July 2, 1997, the appellant should be extended the same benefit. The appellant also served as a casual staff prior to his absorption as a Gram Panchayat Karmee. Not giving the same benefit to the appellant would be in violation of Article 14 of the Constitution. In this connection learned Counsel relied on a decision of the Hon'ble Supreme Court in the case of ***Hari Ram & Anr. v. State of Haryana and Ors., reported at (2010) 3 SCC 621.***

13. Learned Counsel also relied on the following decisions:-

- (i) *In Re: Funia Done v. State of West Bengal, reported at 2012 SCC OnLine Cal 10022.***
- (ii) *A decision of a Division Bench of this Court in WPST No. 55 of 2003 (Kamrul Karim v. The State of West Bengal & Ors.).***
- (iii) *A decision of a Division Bench of this Court rendered in MAT No. 10 of 2005 (The State of West Bengal & Ors. v. Paresh Chandra Ray Eashor).***
- (iv) *A decision of a Division Bench of this Court in WPST No. 112 of 2019 (Ashim Kumar Chakrabarti v. The State of West Bengal & Ors.).***

14. Let us advert to the decisions cited by learned Advocate for the appellant.

15. *Hari Ram & Anr. v. State of Haryana and Ors., Supra*, was a land acquisition case. After initiating acquisition proceedings, the State Government had withdrawn from such proceedings in so far as some of the land owners were concerned. The other land owners complained of discrimination. It was held that passing different orders in respect of persons similarly situated relating to the same acquisition proceedings and for the same public purpose is violative of Article 14 of the Constitution and is discriminatory. Equality of citizens' rights is one of the fundamental pillars on which the edifice of the rule of law rests. All actions of the State have to be fair and for legitimate reasons. The Government cannot pick and choose some land owners and release their land from acquisition and deny the same benefit to other land owners by creating artificial distinction.

16. *In Re: Funia Done v. State of West Bengal, Supra*, the petitioner was employed as a sweeper in a sanctioned post and worked on a casual basis for 22 years. She was not made permanent. She approached the Court. A Division Bench of this Court, noticing a Government order no. 1700 dated August 3, 1979 and the decisions in ***State of Karnataka and Ors. v. M.L. Kesari and Ors., reported at AIR 2010 SC 2587*** and ***Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors. reported at AIR 2006 SC 1806***, directed regularisation of the petitioner's service.

17. *In Kamrul Karim v. The State of West Bengal & Ors., Supra*, the petitioner was appointed in terms of an advertisement dated November 5, 1999, as Medical Technologist (Electro Cardiogram) [in short as M.T. (ECG)] under the State Health System Development Project in South 24 Parganas under the Health and Family Welfare Department, Government of West Bengal. The appointment was on a contractual basis having a consolidated remuneration. The contract was for one year. Such contract was renewed, year after year till the petitioner's service was

regularised by an order dated March 5, 2008, with effect from May 17, 2007. The petitioner attained the age of superannuation on December 31, 2015. He was denied pension as his period of service fell short of 10 years (as required by the DCRB Rules) by 1 year 4 months and 15 days. This short fall was because his service for the period prior to his regularisation was not considered.

A Coordinate bench of this Court noted that the petitioner had rendered continuous service of a perennial nature on a whole-time basis. Such service would fall within the meaning of “temporary service” as appears in the DCRB rules. Therefore, the petitioner’s service from day one when he was engaged contractually, should be taken into account for the purpose of deciding his entitlement to pensionary benefits.

18. In *State of West Bengal & Ors. v. Paresh Chandra Ray Eashor, Supra*, a Coordinate Bench upheld the order of a learned Single Judge condoning the short fall in the period of service for the purpose of qualifying for pension. In the facts of that case, it was held that the petitioner was in no way to be blamed for delayed issuance of letter of appointment. The State Government by its own inaction and laches had issued the appointment letter belatedly preventing the petitioner from serving for ten years. Therefore, the Court condoned the short fall in pensionable service period.

19. In *Ashim Kumar Chakrabarti v. The State of West Bengal & Ors., Supra*, a similar situation arose. Although the petitioner in that case was found to be eligible for appointment, the State issued the appointment letter after a delay of seven years. The result of such delay was that on the date of superannuation, the petitioner had not completed the pensionable service period of ten years. A Coordinate Bench directed the authorities to disburse the applicable retirement

benefits to the petitioner proceeding on the basis that the petitioner had put in pensionable period of service.

20. Facts of each of the aforesaid cases are different from the facts of the present case. In the present case, the appellant relies on a particular memorandum dated July 2, 1997, issued by the Principal Secretary to the Government of West Bengal. The said memorandum reads as follows: -

“No. 2730/PN/O/I/3S -120/97,

Dated: 2.7.97

1. For the purpose of regularisation of the posts of Dafadars and Chowkidars working in the Gram Panchayats within this State on constituting a regular cadre, the posts of Gram Panchayat Karmee were created with effect from 1st April, 1994 under the Gram Panchayats with a scale of pay and allowance as admissible to other Group- D employees of Panchayat bodies i.e., scale No. 1 of ROPA, 1990. These posts were primarily filled up on absorption of serving Chowkidars and Dafadars who exercised options accordingly. Since the service rendered by them in the capacity of Chowkidars and Dafadars prior to their absorption as Gram Panchayat Karmees with effect from 1.4.1994 was not deemed as regular service under the Gram Panchayat, the service rendered by them previously as Dafadars and Chowkidars was held to be inadmissible for counting towards' qualifying service for pension and other retirement benefits.

2. In terms of the order in force, post-retirement benefit of Dafadars/Chowkidars is limited to lump sum amount of Rs. 3000/-. If the qualifying service of such Dafadars/Chowkidars now absorbed as Gram Panchayat Karmees is considered with effect from 1st April, 1994

without counting the period of service rendered by them as Dafadars and/or Chowkidars, these employees are being put into much financial loss causing extreme hardship.

3. After careful consideration of the matter, the Government has now decided that in partial modification of this Department No. 1113/Panch/2E-47/92 dated 28.4.94, the previous service rendered by all Chowkidar/Dafadar before their absorption as Gram Panchayat Karmees will count towards pension and other retirement benefits as a special case, subject to the conditions as follows:

(a) the period of service rendered as Chowkidars/Dafadars must be continuous, and there must not be any interruption between their service as Chowkidars/Dafadars on the one hand and Gram Panchayat Karmees on the other and

(b), the employer's share to contributory fund with interest thereon, if any, is refunded to the Government.

4. This order issues with the concurrence of the Finance Department vide their U. O. No. Gr. J. (Fin) 477 dt. 24.6.97.

5. The Principal Accountant General, West Bengal is being informed.

Sd/-S. N. Ghosh

Principal Secy. to the Govt. of West Bengal.”

21. A bare perusal of the memorandum would show that the same was issued for the benefit of Dafadars and Chowkidars who were absorbed as Gram Panchayat Karmees, such post having been created with effect from April 1, 1994. It is not the present appellant's case that prior to being appointed as Gram Panchayat Karmee,

he worked as a Dafadar or a Chowkidar. In fact, the nature of his work has not been indicated by the appellant. He has only run a case that he worked as a casual worker prior to being appointed as Gram Panchayat Karmee. Therefore, in our opinion, the appellant cannot base his claim for pensionary benefits on the aforesaid memorandum.

22. The appellant has also not argued that the service that he rendered as casual worker was of the same or similar nature as the service rendered by Dafadars and Chowkidars. Therefore, the case of discrimination that the appellant's learned Counsel sought to argue feebly, is also not substantiated.

23. The fulcrum of the appellant's case is the memorandum dated July 2, 1997. In our considered view, the appellant is not covered by the said memorandum.

24. None of the decisions cited by learned Advocate for the appellant advances the appellant's case to any extent.

25. In the result, this appeal fails and is dismissed. There will be no order as to costs.

26. Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)