

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

WPST 173 of 2024

Smt. Alochana Pan & Ors.

Versus

The State of West Bengal & Ors.

For the Petitioners. : Dr. Debabrata Karan,
Ms. Sabita Khuntia (Bhuniya)
Mr. Krishnapada Santra,
Ms. Arpita Saha
Mr. Souvik Naiya

For The State : : Mr. Tapan Kumar Mukherjee, ld. AGP.
Ms. Sangeeta Roy

Judgment on : January 06, 2026.

Madhuresh Prasad, J.:

1. The husband of the petitioner No. 1 was the applicant before the West Bengal State Administrative Tribunal (hereinafter referred to as the Tribunal in short) in O.A No.375 of 2017 and thereafter the writ petitioner before this Court. He has since been substituted by the present writ petitioners. We will refer to the original applicant/ writ petitioner as the petitioner, hereafter. The petitioner filed the Original Application with a prayer for setting aside an order dated 22.04.2016, issued by the Indian Audit and Accounts Department under the signature of the

Senior Accounts Officer. By the said order the Senior Accounts Officer conveyed the decision that the petitioner had qualifying service (1 year 5 months and 15 days) from 16.01.2009 to 30.06.2010. The petitioner's claim for pension was thus found to be inadmissible since he was not having requisite qualifying service (10 years) for grant of any pensionary benefits. By the self-same order dated 22.04.2016, the Senior Accounts Officer has recorded the fact of release of the petitioner's Service gratuity vide Payment Order dated Pen-XII/133272. The petitioner put to challenge this order dated 22.04.2016, in the Original Application and prayed for grant of retiral benefits including pension in acknowledgement of the period of temporary services rendered by the petitioners since 1975, treating him to be in substantive permanent service with effect from 01.01. 2002, in terms of the order dated 26.09.2001 passed on petitioner's earlier O.A. No.876 of 1998.

2. The Tribunal rejected the petitioner's original application by an order dated 04.04.2024, which the petitioners challenged in the present writ petition.
3. The applicant before the Tribunal, since deceased, joined as DDT spray worker in the year 1975, he was working in the Office of the Deputy Chief Medical Officer of Health-II, Midnapur (DCMO for short). The petitioner along with others filed O.A No.876 of 1998 seeking a relief of appointment by way of regularization of their services. After hearing the parties, the Tribunal passed an

order on 26.09.2001, directing the authorities to give appointment to the petitioner strictly in accordance with seniority of claim as per serial.

4. The writ petition bearing no. WPST 1284 of 2001 filed by the Government of West Bengal challenging the Tribunal's order, was dismissed by the Coordinate Bench on 13.07.2005. The State Government preferred an SLP before the Apex Court. The Special Leave to Appeal (Civil) No. 2481 of 2007 filed by the State Government was dismissed on 19.09.2008.
5. The fruits of the decade long litigation were made available to the petitioner by appointing him as a regular employee on 16.01.2009. The petitioner, upon attaining the age of superannuation retired on 30.06.2010. He thereafter, approached the authority for release of pensionary benefits, which was rejected on 22.04.2016.
6. The issue, arising for consideration is whether the petitioner is entitled to counting of services beyond the period of 1 year, 5 months and 15 days, for the purposes of qualifying service for grant of pensionary benefits.
7. We are, therefore, required to consider whether discharge of duty for decades as a temporary/seasonal worker as DDT Spray Worker, i.e. from 1975 till 2009, prior to his regularization, is to be ignored; or whether the same deserves any consideration whatsoever under the Death-cum-Retirement Benefit Rules of

the State of West Bengal, (DCRB in short) and/or any other Rule, decision or executive instruction issued in this regard.

8. The Tribunal in the order dated 26.09.2001, passed on petitioner's earlier OA No. 876 of 1998, has taken into consideration notification relevant to the petitioner's claim for absorption/appointment including notification no. Emp-1700 dated 03.08.1979 as also no. Emp-100 dated 13.03.1996. The Tribunal found that the State's attempt to label the petitioners as seasonal workers was not acknowledged by any definition in this regard in Emp 1700. The Government in the Health and Family Welfare Department, however, vide an order dated 15.10.1979 bearing No. ESTT.733 declared DDT Spray Workers as seasonal workers. Considering these memos, the Tribunal found that:

"From the discussion of the Memorandum/notification etc. as discussed above, the following position emerged as regards to absorption of DDT Spray Workers.

- (i) If engaged after the cut-off date of 31.12.91, the cases are to be taken up by the administrative dept. with Labour dept. for decision in consultation with Finance Dept.*
- (ii) Engagement of 120 days in DDT Spray Work in a season not necessarily at a stretch but within 6 months in a calendar year.*
- (iii) Such engagement for 5 consecutive years/seasons will make them eligible for absorption/appointment against vacancy in Group 'D' posts. (Chief Secretary's Memo No. 1460-Emp dt.09.07.81)"*

9. After such consideration, the Tribunal found that the government took a conscious decision to absorb these categories

of workers like the petitioner subject to fulfillment of stipulation 5(a) and 5 (b):

- (a) "They must be engaged or rather they must work at least for 120 days, not necessarily at a stretch, but in a season in a calendar year (Emp-1700 dt. 3.8.79 para 5, read with Memo No. Emp-1650 dt. 28.8.80 para 3)*
- (b) The engagement shall be for a 5 consecutive seasons (Emp-1700 dt. 3.8.79 para 5 as referred to above."*

10. The O.A was thus disposed of by directing that after excluding the Spray Worker who entered for the first time after 31.12.1991 a district wise position of seasonal workers including their season/year wise engagement was required to be worked out by the concerned CMOH. Thereafter names of eligible candidates, who worked for 120 days and for 5 consecutive seasons were required to be prepared and forwarded to the Director of Health services within 2 months from communication of the order passed by the Tribunal.

11. The CMOH was thereafter required to prepare a list of vacancy-position and to submit the same to the Director of Health Services, West Bengal within 2 months thereof. There is a further direction that on receipt a list of eligible candidates and scrutiny thereof the Director, Health Services was to prepare a list of eligible candidates for absorption/appointment District wise and to direct the concerned CMOH for filling up 50% of the vacancies in the district as per seriality. Allowing the first entrant to get first appointment, and so on. In view of the time

frame specified in the order the Tribunal was of the view that the first appointment commence with effect from 01.01.2002. The Tribunal further directed for relaxing the maximum age criteria while absorbing the DDT/ Kala-azar Spray Worker.

12. The Tribunal granted relief by way of a direction for regular appointment of the writ petitioner relying upon the right to such regularization in view of stipulations contained in Memorandums issued in 1979 (700 Emp) up to Memo dated 09.07.1981 (1460 Emp) issued by the Chief Secretary, Government of West Bengal. Despite such government decisions favouring absorption of the petitioner and despite the fact that the petitioner was discharging duties as DDT worker since 1975, no steps were taken by the State authorities to regularize the petitioner's service.

13. We find that on 18.01.2000, the Tribunal passed in an interim order in O.A. No. 876 of 1998, restraining the concerned CMOH from making any appointment to Class (IV) Posts under their disposal without leave of the Tribunal, till disposal of the case. The petitioners' right to be considered for absorption and for absorption was thus protected by an interim order of the Tribunal. Such right was being claimed with reference to the petitioner' service since 1975, based on Memos issued by the Government in between 1979 to 1981 as noted above.

14. Relying on these Memos issued by the State authorities the Tribunal found petitioner eligible for regular appointment and

thus gave a positive direction in this regard on 26.09.2001. Rather than enforcing their own Memos, the state authorities choose to challenge the Tribunal judgment up to the apex court. The judgment of the Tribunal was sustained and the apex Court dismissed the SLP filed by the State on 19.09.2008. It is not in dispute that in the meantime, the writ petitioners continued to discharge their duties. It is also nobody's case that in the meantime petitioners were disqualified for being extended the benefits of the Office Memorandum taken note of above. In view of the long litigation thrust upon the writ petitioners, firstly due to administrative inertia and thereafter, because the State chose to assail the order of the Tribunal upto the apex Court, the writ petitioners while discharging their duties were all along deprived of service benefits at par with regular employees. They were denied of consideration for regular appointment despite Memos issued in this regard as far back as in the years 1979-81. Therefore, this Court cannot countenance that in the facts and circumstance taken note of above, the petitioner should also be deprived of atleast the benefit of reckoning of the period of his temporary service for extending minimum pensionary benefits.

15. We find no force in submission of the learned AGP that being Seasonal Worker and; since the petitioner's recruitment as DDT Spray Worker was not against the sanctioned post, he cannot be extended the benefit of counting of his above noted period as a qualifying service for grant of pension. Relying upon State

Memos the Tribunal upheld the petitioners' claim to acknowledgement of their services as seasonal workers for the purpose of regularization. The Tribunal's order dated 26.09.2001, in this regard was upheld by the High Court; and even the State's SLP was dismissed by the Supreme Court. The issue, therefore, attained finality between the parties. Therefore, we are of the view that now it is not open to the State to resist the petitioners' claim for acknowledgement of the services prior to regularization order being issued by the State on the same ground that the services rendered prior to regularization was as seasonal worker and not against any sanctioned post. These grounds were already rejected by the Tribunal and the Co-ordinate Bench of this Court in the earlier round of litigation arising out of O.A No.876 of 1998. In the earlier proceeding the state resisted the petitioner's claim to regularization on the same grounds which were not found to be tenable in view of the Memos issued by the State itself, which, it was found acknowledged the petitioner's claim to regularization. It is already settled that in terms of the Memos issued by the State, which were then applicable, the writ petitioners services as DDT Spray Workers were acknowledged for regularization.

16. Just because the State wrongly denied the petitioners' right to regularization for years together, and belatedly extended the benefits due in acknowledgment of their decades of service as

DDT Spray Workers, the writ petitioners cannot be made to suffer the consequence.

17. In this connection our conclusion is also fortified by a decision of the coordinate Bench in the Case of **Nemai Ch. Chatterjee & Ors Vs. State of West Bengal & Ors.** reported in **2014 (3) CHN (CAL) 608**. The Coordinate Bench in the judgment of **Nemai Ch. Chatterjee & Ors. (supra)** considered the provision in the DCRB Rules as also the argument regarding the services rendered by the petitioners therein being not against sanctioned post. The coordinate Bench has considered this aspect of the matter, which is binding on this bench and therefore, our view does not require any reconsideration. The consideration of the Division Bench in this regard is as follows:

“8. Before proceeding to consider the rival submissions of the learned Advocates, it would be appropriate to consider certain provisions of the DCRB Rules.

9. Rule 17 of the DCRB Rules defines qualifying service and stipulates that it shall commence from the date a Government servant takes charge of the office to which he is first appointed either substantially or in an officiating or temporary capacity.

10. Rule 18 of the DCRB Rules reads thus:

“Service of an officer does not qualify for pension unless it conforms to the following condition to the following conditions, namely:

“(a) the service must be under Government;

(b) the employment must be -

i) substantive and permanent or

ii) of permanent status, or quasi-permanent,

(c) the service must be paid by Government,”

11. *The condition of Rule 18(b) stands relaxed as the Memo No. 2255 F issued by the Finance Department on 22.03.1973, which stipulates that a Government servant who has worked continuously as a temporary employee for ten years or more would be granted pension and gratuity as admissible to permanent Government employees under the normal rules.*

12. *Rule 22(1) reads as under:*

“22(1) Any temporary or officiating service under Government followed with out interruption by confirmation or by declaration as quasi-permanent or permanent in status in the same or another post shall however count in full as qualifying service except that shall however count in full as qualifying service except that-

(a) the period of temporary or officiating service in and establishment where contributory provident fund benefits are allowed shall not count unless the Government contribution including interest is refunded in full to Government;

(b) the period of service paid from contingencies shall not count.”

13. *A bare perusal of the aforesaid Rules, in our opinion, leaves no manner of doubt that the service rendered by an employee on a temporary basis must be taken into account in computing qualifying service if is followed immediately, without a break, by permanent or regular service. In fact, Rule 17 speaks about qualifying service being calculated from the date of initial appointment in service, even in a temporary capacity. The condition for payment of pension is that the person should have rendered qualifying service of ten years for the grant of pension. It is not possible to accept the submission on behalf of the State that service rendered by an employee during the period spent on temporary service should be excluded for the purpose of reckoning the qualifying service. In the present case, there is no doubt that there was no interruption in service. All the employees worked continuously, without a break, since their respective dates of recruitment in service.*

14. *It has been argued on behalf of the Government that unless the Petitioners were appointed temporarily on sanctioned posts, the*

question of paying pension to them does not arise. It has been urged further that there can be no temporary service of an employee in a post unless that post is sanctioned. This submission on behalf of the government is, in our opinion, untenable. An employee is appointed on a temporary basis depending on the exigencies of work. The Petitioners in this case, though appointed on a temporary basis as Seasonal Belders, were accorded a regular scale of pay and all allowances and benefits applicable. These Petitioners were employed continuously in the Irrigation Department of the Government of West Bengal. Some of them have rendered continuous service for more than thirty years. The DCRB Rules do not in any manner exclude the entitlement of temporary employees to pension, provided their temporary service is followed immediately, without a break, by permanent service. Therefore, it is not possible to accept the submission made on behalf of the Government. The argument that the Petitioners ought to have rendered service in sanctioned posts is also untenable as temporary employees are recruited depending upon the exigencies of work. It would be inequitable to exclude the period rendered by the Petitioners as temporary employees for the computation of qualifying service and consequently pension, when the Rules do not exclude this period. In fact, the Rules and the Memo dated 22.03.1973 issued by the Finance Department specifically include the period rendered by an employee as a temporary employee for the purpose of counting the qualifying service, except where the temporary service is rendered in an establishment where Contributory Provident Fund benefits are paid. However, this exception does not become effective if the Government's contribution to the Fund and the interest thereon is refunded to the Government.”

18. The Co-ordinate Bench, thereafter considered decision of the Apex Court in the case of **Punjab State Electricity Board & Anr. V. Narata Singh & Anr. AIR 2010 SC 1467**, wherein the view of the Punjab and Haryana High Court in the case of **Kesar Chand v. State of Punjab & Ors. AIR 1988 P & H 265** dealing with Rule 3.17 of the Punjab Civil Service Rules which was pari-

matria with Rule 27 of the DCRB Rules was affirmed by the Full Bench of the Punjab and Haryana High Court, rejected the classification sought to be made out between Government Servants eligible for pension and those who commenced service as worked charge and were later regularized as not being based on any intelligible criteria.

19. Thus, the Coordinate Bench in the case of **Neemai Ch. Chatterjee & Ors.** (*supra*) held:

“18. The submission on behalf of the State that the judgment of the Division Bench in Haradhan Mahato v. State of West Bengal [WPST 184 of 2010] is per incuriam and sub silentio is unacceptable. There can be no dispute about the proposition of law expounded in the judgments in Faridabad CT. Scan Centre (supra) and State of Bihar v. Upendra Narayan Singh (supra) that a benefit given to one set of persons wrongly, cannot be extended to others by invoking Article 14 of the Constitution of India. However these judgments are not relevant in the facts of this case. We have considered the DCRB Rule independently and in our opinion the period of service rendered by a Government Servant on a temporary basis must be reckoned for the purpose of qualifying service and consequently payment of pension, provided, that service is followed immediately and without a break by permanent service

20. However, where the Petitioners have not rendered ten years qualifying service even after reckoning the period of service rendered by them as temporary employees they would not be entitled to pension as a matter of right. In such cases the Government will apply Rule 36 of the DCRB Rules under which it is vested with the power to condone the deficiency in the qualifying service up to six months. An employee may also apply to the Governor of the State of West Bengal for the relaxation of the Rules under Rule 4 of the DCRB Rules.”

20. The decision in the case **Nemai Ch. Chatterjee & Ors.** (*supra*) is a decision of a Co-ordinate bench of this Court. In view of the

facts and circumstances taken note of above; and the foregoing consideration of the same we are of the view that the writ petitioner cannot be deprived the counting of service from at least 1998 when he approached the Tribunal by filing O.A No.876 of 1998, wherein interim order was passed protecting his right. Though he is not entitled to any actual benefit as government servant prior to his appointment by way of regularization on 16.01.2009, the period from 1998 is required to be reckoned for the purpose of ascertaining qualifying service for pension purpose. The petitioner is thus entitled to receive a minimum pension as admissible on completion of qualifying service of 10 years.

21. The respondents are directed to ascertain and pay to the petitioner minimum pension within eight weeks from the date of receipt/production of a copy of this judgment before the respondents. Arrears of pension from the date of petitioner's attaining superannuation that is 30.06.2010, till the date from which payment of pension is started, be also paid to the petitioner within the same period, failing which the amounts due to the petitioner as arrears of pension shall incur liability of interest at the rate of 8% per annum from the date of petitioner's superannuation till actual payment of arrears of pension amount

22. The writ petition is allowed.

23. Pending application and interim order if any stand disposed of accordingly.

24. Urgent Photostat certified copy of this Judgment, if applied for,
be given to the parties on completion of usual formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)