

W.P.S.T. 231 of 2025

**Shri Ashoke Kumar Koley @ Ashok Kumar Koley
@ Ashok Kumar Koley
Vs.
The State of West Bengal & Ors.**

Mr. Uday Sankar Chattopadhyay,
Mr. Suman Chatterjee,
Ms. Trisha Rakshit,
Ms. Aishwarya Datta,
Ms. Bidisha Chakraborty,
Ms. Sadia Parveen

...for the Petitioner

Ms. Chandreyi Alam, Id. A.G.P.,
Ms. Kakali Dutta

...for the State

1. Heard the learned advocate for the applicant/writ petitioner and the learned A.G.P.
2. The petitioner's claim for grant of pensionary benefits has been declined by the authorities. He has served as a Constable in the Police Force after his appointment in 2006, till his retirement on 31.07.2015. The qualifying service for the purposes of grant of pension was 10 years. The petitioner taking into consideration this service period had acquired 7 years 8 months and 15 days of service. The qualifying service, therefore, was short by more than 2 years.
3. The learned advocate for the petitioner submits that the authorities and the West Bengal Administrative Tribunal ('Tribunal' for short) have omitted to take into consideration the fact that prior to the petitioner's appointment in 2006, he

was working as a volunteer under the West Bengal National Volunteer Force (N.V.F.).

4. He has referred to paragraph 3 of the affidavit-in-opposition filed by the respondent authorities to contend that bare perusal of the same reveals an admitted position that prior to the petitioner's appointment in 2006, he was already working under the State Government, and therefore, would be entitled to benefit of Rule 18 of the West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971 (hereinafter referred to as 'DCRB Rules'). He has referred to the provision along with a Memorandum issued by the Finance Department dated 22.03.1973. He, thus, submits that he was in a temporary Government service and therefore, the services rendered in that capacity were required to be acknowledged and recognised for the purposes of qualifying service for grant of pension.
5. Learned advocate submits that considering his service in the N.V.F., some age relaxation was also granted to the petitioner in the regular recruitment process conducted in 2006. Therefore, there is no occasion for the authorities to deprive the petitioner of the services rendered prior to his appointment in 2006.
6. In support of his submission, he has referred to two judgements of the Hon'ble Supreme Court of

India. The judgement in the case of ***State of Himachal Pradesh and Anr. Versus Sheela Devi*** reported in **2023 SCC OnLine SC 1272** and judgement in the case of ***S.D. Jayaprakash & Ors. Versus Union of India & Ors.*** reported in **2025 SCC OnLine SC 973**, have been relied upon.

7. The learned A.G.P. has opposed the prayer based on the assertions made in the affidavit-in-opposition. It is submitted that the petitioner's appointment in 2006, was a fresh/new appointment. The fact that the petitioner was a volunteer under the West Bengal National Volunteer Force Act 1949, will not enure to his benefit, as a temporary service, or any kind of Government service, so as to fall within the scope of the Finance Department Memorandum dated 22.03.1973; or Rule 18 of the DCRB Rules 1971.
8. We have considered the rival submissions.
9. We have also examined the West Bengal National Volunteer Force Act 1949, copy of which was given to us today by the learned advocate for the applicant/writ petitioner.
10. The aim and object of the Act itself reveals the nature of engagement of the members of the Force. The Act is stated to provide for constitution of a National Volunteer Force in West Bengal by enrolment therein of the citizens of India or

persons having permanent domicile in West Bengal, who may offer themselves for such enrolment. The enrolment is done with a view to engaging the services of such enrolled volunteers, in the event of emergency and for such other purposes. The petitioner's enrolment under the West Bengal Volunteer Force Act, 1949, therefore can, by no stretch of imagination, be considered to be any kind of continuous service under an office in the State Government so as to attract the provisions of the Finance Department Memorandum dated 22.03.1973 or Rule 18, of the DCRB Rules.

11. On going through the provisions contained in the finance department memorandum dated 22.03.1973 we find that the same was issued by the Government considering the requirement of taking measures for further liberalisation and simplification of the rules regulating grant of pension. Under the circumstance the government decided to allow certain additional benefits in respect of pension, enumerated therein. The learned advocate has relied upon Clause (iii) of the Memorandum which reads:

“(iii)Temporary Government Servants rendering continuous service for ten years or more will be granted pension and gratuity as admissible to permanent Government Servants under the normal rules;”

12. Rule 18(3) of the DCRB is founded on this FD Memo. Plain reading of the Clause 3 leaves no ambiguity that the same provides for grant of pension and gratuity to “*temporary government servants*” who served continuously for 10 years or more. The petitioner was never a temporary government servant, rather he was a volunteer enrolled in the west Bengal National Volunteer Force so that he may be called upon to render service in case of emergency or for such other purposes. The learned Counsel for the petitioner’s reliance upon FD Memo dated 22.03.1973 and Rule 18 of the DCRB is therefore, devoid of any substance.
13. We, thereafter, venture to examine the two judgements relied upon by the learned advocate for the writ petitioner.
14. We find that the said two judgements are factually distinguishable from the facts of the present case.
15. In the case of ***Sheela Devi*** (*supra*) we find that the writ petitioners were engaged on contractual employment. Their continued engagement on contractual basis was regularized by the state authorities. The writ petitioner therefore claimed that upon regularization they were entitled to reckon the period of contractual employment, for the purpose of pension. Considering rule 17 of the CCS Pension Rules, 1972 the Apex Court was of

the view that the provision was engrafted essentially to cater to the eventuality, where the employees working on contract basis were regularized at a later stage. In **S.D. Jayaprakash** (*supra*) the Hon'ble Supreme Court of India was considering the effect of the same rule 17, considered in the case of **Sheela Devi** (*supra*).

16. No such facts arise for consideration in the present case, where the petitioner prior to his appointment in 2026 was only an enrolled volunteer in a volunteer force. The petitioner therefore cannot claim benefit of FD Memo dated 22.03.1973, as the petitioner was not employed in any capacity prior to 2006.
17. There was only an enrolment in a force in terms of the West Bengal National Volunteer Force Act. The enrolment was an Act of Volunteer done by the persons who are desirous of getting themselves enrolled for rendering services, as and when required during emergency or otherwise.
18. We find no scope for the petitioner to be extended the benefits of Rule 18 of the Finance Department Memorandum dated 22.03.1973. The petitioner, therefore, would not be entitled to any pensionary benefit as the qualifying service is short more than two years.
19. The order dated 04.04.2025 passed by the Tribunal in O.A. No. 376 of 2023, does not require

any interference in exercise of extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India.

20. The Writ Petition is dismissed.

(Madhuresh Prasad, J.)

(Biswaroop Chowdhury, J.)