

W.P.S.T. 276 of 2025

**The State of West Bengal & Ors.
Vs.
Gouranga Rabi Das & Anr.**

Ms. Ashmita Chakraborty

...for the Petitioners

1. Affidavit-of-service filed on behalf of the petitioners is taken on record.
2. Heard the learned counsel for the State/writ petitioner.
3. The State is assailing the order passed by the West Bengal Administrative Tribunal ('Tribunal' for short) in O.A. No. 2 of 2023. The order is dated 16.05.2024.
4. The order has been passed on an application wherein the applicants put to challenge one reasoned order passed by the State authority rejecting the applicants' substantial claim for grant of pensionary benefits which they were deprived of because there was a shortage of about 9 months for applicant no. 1 and 10 months for applicant no 2 in the qualifying service (10 years) for the purposes of grant of pensionary benefits. The order disposing of the applicants' claim is dated 16.12.2022 issued by the Director of Animal Husbandry and Veterinary Services, West Bengal.
5. The Tribunal found the order to be unsustainable and quashed the order. The respondent no.2 was

directed to reconsider the matter and pass a reasoned order in terms of the observations made in the penultimate paragraph of the order, wherein the Tribunal recorded a finding that there was an inordinate delay in giving the applicants an appointment order in terms of their performance in the recruitment process. The authorities by committing some irregularities in the recruitment process and by virtue of the lackadaisical attitude, delayed the issuance of appointment letters to the applicants, for which the Tribunal found that the applicants cannot be made to suffer deprivation of their retiral/pensionary benefits. The Tribunal has considered the claim of the applicants by a detailed order, considering the entire facts and the law in proper perspective.

6. We do not find it necessary to reproduce or reconsider the entire things in view of the well considered order passed by the Tribunal in O.A. No. 2 of 2023.
7. We, however, take note of certain relevant facts, that the applicants participated in the recruitment process for the post of Livestock Development Assistant held in the years 1995, which was completed in 1997. The applicants' name did not figure in the select list, which brought them to the

Tribunal. They filed O.A. No. 222 of 1998, alleging that the authorities did not abide by the 100-Point Roster and also that the recruitment process was not conducted in conformity with the West Bengal S.C. & S.T. (Reservation of Vacancies in Services and Posts) Act, 1976. The Tribunal found the allegations of the applicants to be sustainable and by its judgement dated 24.03.2003, found that since the candidates eligible for reservation had obtained equal or more marks than the last candidate in the general category, they were wrongly placed as reserved candidates, and were required to be placed in the unreserved category based on their merit.

8. The Tribunal, therefore, found that such candidates were required to be shifted in the unreserved category, paving the way for appointment of the present applicants under the reserved category based on their marks. The Tribunal held, in respect of the present applicants, as follows:

“In such view of the matter, serial Nos.47, 51, 57, 61, 65, 68 & 71 qualify to get appointments.”

9. Despite of such order being passed by the Tribunal in 2003, the applicants were compelled to approach the Tribunal by way of proceedings for contempt against the respondents for their

non-compliance with the order. A contempt application being Contempt No. 86 of 2004 was filed by the applicants.

10. Two years after the contempt proceedings were initiated, the applicants, (present respondents), were sent for Pre-Service Training on 27.01.2006. The one-year Pre-Service Training was successfully completed on 25.01.2007. Thus, from the date of the Tribunal's judgement in March, 2003, the completion of the applicants' Pre-Service Training was delayed by about three years due to inaction on the part of the respondent authorities.
11. The inaction on part of the respondents did not stop here. Even after completion of Pre-Service Training on 25.01.2007, it took the respondent authorities more than one and half years to issue the appointment letter, which came to be issued on 22.10.2008.
12. The facts with reference to above dates are not in dispute. There is also no reason whatsoever forthcoming to explain or sustain the delay/s noted above.
13. It is under such circumstances that even after appointment, the applicants could not complete more than 9 years 3 months and 0 days & 9 years 2 months 4 days , making their qualifying

service deficient by about 9 months and 10 months respectively for applicants no.1 and 2 (present respondents), for the purposes of grant of pension.

14. In the above circumstances, the Tribunal passed the order considering the delay on the part of the respondent authorities and therefore, passed orders to ameliorate the suffering of the applicants as a result of the delay/lapse committed on the part of the respondent/writ petitioner.
15. The Tribunal's order in the above circumstances requires no interference.
16. From consideration of the above facts it appears that the State having delayed the appointment of the petitioners are trying to take advantage of this delay before the Tribunal to sustain the order passed by the Director of Animal Husbandry and Veterinary Service , West Bengal on 16.12.2022 rejecting the petitioner's claim for pension by citing a shortage in qualifying service of nearly 9 months in case of respondent no.1 and nearly 10 months in case of respondent no.2. It is trite law that writ petitioner cannot be permitted to take advantage of their own lapse/delay in complying with the directions issued by the Tribunal in O.A. No.222 of 1998. The law in this regard is a settled by a decision of the Apex Court in the case of

Machhindranath v. Ramchandra Gangadhar Dhamne & Ors , (2025) 7 SCC 456 in paragraph 42 of the said judgment the Apex Court has taken note of its earlier decision wherein the settled legal position was stated in the case of ***Kusheshwar Prasad Singh v. State of Bihar***, (2007) 11 SCC 447. The Apex Court has laid down the law with reference to the Latin maxim “*commodum ex injuria sua nemo habere debet*” (no party can take undue advantage of his own wrong).

17. The Writ Petition filed by the State, therefore, is devoid of any merit.
18. We do not find any reason to interfere with the order dated 16.05.2024 passed by the Tribunal in O.A. No. 2 of 2023.
19. Without raising the issue of deficiency in qualifying service, the respondent no.2 should, therefore, proceed to pass an order in compliance with the Tribunal’s observations, granting the pensionary benefits, if there is no other impediment; in accordance with law.
20. Since the time fixed by the Tribunal’s order dated 16.05.2024 has lapsed, we grant the Director a further time of four weeks from the date of receipt/production of a copy of this order to pass order in compliance with the Tribunal’s order and having regard to the findings and observations of

the Tribunal, as well as this Court in the present order.

21. The Writ Petition is dismissed.
22. The consequential benefits, if any, be extended to the applicants within a period of four weeks thereafter.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)