

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

WPA 7881 of 2022

**Goalbadan Mandal
versus
State of West Bengal & ors.**

For the Petitioner : Mr. Biswarup Biswasadvocate

For the State : Mr. Amal Kr. Sen, A.G.P
Mr. Lal Mohan Basu ... advocates

Reserved on : 30.06.2023

Judgment on : 03.08.2023

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner has challenged the order of the Principal Secretary to the Government of West Bengal School Education Department dated 24.02.2022 and has prayed for condonation of deficiency in the qualifying service period for grant of pension.
2. The writ petitioner claims that he was appointed as an Assistant Teacher of a primary school on 15.03.2011 after a protracted litigation. He ultimately retired from service on superannuation on 31.08.2020. The petitioner rendered service for a period of 9 years 5 months and 17 days. The qualifying period for receiving pension as per the service rules is 10 years. As there was a shortfall in qualifying service for a period of about 6 months and 13 days the petitioner has been held to be not entitled to retiring pension. The petitioner by a representation dated 28.09.2020 applied before the District Inspector of Schools (for short "DI"), Murshidabad praying for condonation of deficiencies in the service

period. Alleging inaction on the part of the respondent authorities in considering the prayer for condonation of deficiency in the qualifying service, a writ petition being WPA 6632 of 2021 was filed which was disposed of by an order dated 13.12.2021 by directing the Secretary, Department of Primary Education to take a decision with regard to the prayer of the petitioner for condoning the deficiencies in his service period in the light of an order passed in the matter of Aparesh Chandra Dutta within a specified time frame.

3. The prayer for condonation of the shortfall in the qualifying service was, however, rejected by the order of the Principal Secretary dated 24.02.2022. Being aggrieved by the said order dated 24.02.2022, the writ petitioner has filed the instant writ petition.
4. Mr. Biswas, learned advocate representing the petitioner submitted that the authorities were responsible for the delay in the matter of appointment which led to the shortfall in the qualifying service for retiring pension. He, therefore, contended that the petitioner cannot be deprived of the pensionary benefits and the respondent authorities should be directed to treat the petitioners as notionally appointed with effect from an earlier date for the purpose of pensionary benefits. In support of such contention Mr. Biswas placed reliance upon a Division Bench decision of this Court in the case of **State of West Bengal and ors. vs. Sumohan Mondal and ors.** delivered on 11.04.2022 in MAT 1211 of 2019 heard along with MAT 382 of 2019. He also referred to an order dated 08.09.2022 in WPA 12444 of 2017 (**Niharendu Som vs. State of West Bengal and ors.**) in support of his contention that the shortfall in the period of qualifying service should be condoned. He further relied upon a decision of the Hon'ble Division Bench of this Court in the case of **State of West Bengal vs. Aparesh Chandra Datta** reported at (2016) 2 CHN 494.
5. Mr. Amal Kumar Sen learned Additional Government Pleader seriously disputed the contention raised by Mr. Biswas. He contended that the authorities cannot do anything unless the power is conferred by the statutes or the rules framed thereunder. He further contended that the Death-Cum-Retirement Benefit Rules, 1981 (for short "the DCRB Rules) do not confer any power upon the authority to condone the delay beyond six months in the qualifying service. He, therefore, submitted that since there is a shortfall in the qualifying service for a period in excess of 6

months, the authority cannot condone such deficiency in the period of qualifying service. In support of his contention Mr. Sen placed reliance upon an order dated 02.05.2022 passed by the Hon'ble Division Bench in MAT 288 of 2022 (**Shri Samar Nath Pal and ors. vs. State of West Bengal and ors.**). He also referred to the decisions of the Hon'ble Supreme Court in the case of P. Bandopadhyay and ors. vs. Union of India and ors. reported at (2019) 13 SCC 42 and in the case of **Senior Divisional Manager, Life Insurance Corporation of India and ors. vs. Shree Lal Meena** reported at (2019) 4 SCC 479.

6. Heard the learned advocates for the parties and perused the materials placed.
7. Record reveals that the petitioner had to approach this Court to sit for the examination in connection with the selection for appointment to the post of Primary School Teacher. Pursuant to an order passed by this Court, application form was issued to the petitioner by the office of the Murshidabad District Primary School Council (for short "the Council"). Thereafter, the petitioner sat for the examination on 29.11.2009. After the panel was published, the petitioner found that although he was successful in the recruitment process initiated by the Council, he was not selected for which he had to file a writ petition being WP No. 5576 (W) of 2010. The said writ petition was initially moved on 07.05.2010 and directions were passed for filing of affidavits. However, no affidavit-in-opposition was filed by the respondents. When the writ petition came up for final hearing on 06.12.2010 it was submitted by the learned advocate representing the Council that the writ petitioner had, in fact, been selected and his name had been forwarded for approval to the Director of School Education, Government of West Bengal. The said writ petition was disposed of on 06.12.2010 by directing the Director of School Education to take appropriate steps in the matter and grant approval in favour of the petitioner with a further direction upon the Chairman to issue appointment letter thereafter in favour of the writ petitioner. The petitioner was ultimately appointed on 15.03.2011. Thus, it is evident from the order dated 06.12.2010 that the petitioner was selected for appointment to the post of Primary School Teacher but the action of the respondent authorities resulted in the delay in issuing appointment letter to the petitioner. The petitioner cannot be held responsible for the time

taken by the authorities starting from taking decision to forward the name of the petitioner till the date of such appointment.

8. The right of the petitioner to be appointed to the post of Primary School Teacher, however, got crystalised when a decision was taken to forward the name of the petitioner to the Director of School Education for approval. Such delay is solely attributable to the conduct of the respondent authorities and it ultimately led to the shortfall in the qualifying service period for pensionary benefit. The petitioner cannot be penalised for the delay caused by the respondent authorities in appointing the petitioner to the post in question.
9. It is not in dispute that the DCRB Rules 1981 has a statutory favour. It is also well settled that in the absence of any power to condone the shortfall in qualifying service beyond the outer cap, no mandamus can be issued directing the authorities to act contrary to the statutory provisions. It is equally well settled that the petitioner should not be penalized for the lack of promptness in taking action by the concerned authorities.
10. The Hon'ble Division bench in the case of **Sumohan Mondal** (supra) held that when the delay is attributable to the conduct of the authorities and the appointment could not be secured promptly the moment it was crystallized, social justice demands that the person should not lose the benefits when the others have actually received the same with the prompt action of the authorities. The Hon'ble Division Bench recognised that the authorities can be directed to give a notional benefit from a retroactive date for the purpose of extending the pensionary benefits in cases where the authorities failed to act promptly.
11. This Court has already held that the delay in appointing the petitioner is solely attributable to the conduct of the respondent authorities. By applying the proposition of law laid down in Sumohan Mondal (supra) this Court is of the considered view that the date on which the decision is taken to forward the name of the petitioner before the Director of Secondary Education shall be treated as the date of appointment notionally only for the purpose of computing the period of qualifying service for consideration of the claim of the petitioner for pensionary benefit.

12. The decision of the Hon'ble Division Bench in the case of **Samar Nath Pal** (supra) is distinguishable on facts as in the said case the writ petitioners/ appellants therein have abandoned their claim of condonation of qualifying service.
13. In **Shree Lal Meena** (supra) the issue was whether the beneficial provisions in the form of pension regulations can be extended to the employees for whom they were not meant for by the legislature. The said decision being distinguishable on facts cannot be applied to the facts of the case on hand.
14. In the case of **P. Bandopadhyay** (supra) the issue was whether the appellant therein were entitled to receive beneficiary benefits under the Central Government. The said decision being distinguishable on facts is of no assistance to the State.
15. The Principal Secretary, by the impugned order, refused to extend the relief to the petitioner by relying upon the observations contained in the decision of the Hon'ble Division Bench in the case of Aparesh Chandra Datta that such order will not create any precedence for those who are not beneficiary of the order passed in the writ petition being CO No. 11154(W) of 1989 and were not affected by the misdeed of the authority concerned. The Principal Secretary, however, failed to take note of the well settled proposition of law reiterated by the Hon'ble Division Bench in the said decision that an authority cannot by taking advantage of their own wrong penalise the petitioner by refusing to grant pension on the ground of deficiency in the qualifying period of service. The Hon'ble Division Bench further observed that the writ petitioner therein lost eight years of service for no fault of his own. Therefore, for such reason the impugned order is liable to be set aside.
16. Accordingly, the impugned order stands set aside. The Secretary, Department of Primary Education being the first respondent is directed to consider the claim of the petitioner for pensionary benefit, by treating the petitioner to be notionally appointed on the date when the decision was taken to forward the name of the petitioner to the Director of Secondary Education, West Bengal for approval of appointment and decide such claim by passing a reasoned order in the light of the observations contained in this order after giving an opportunity of hearing to the petitioner or his authorised representative and to

communicate the order to the petitioner. The entire exercise shall be completed within a period of four weeks from the date of receipt of a server copy of this order. With the aforesaid direction, the writ petition stands disposed of. There shall be no order as to costs.

17. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)