

(2019) 09 CAL CK 0157

In the Calcutta High Court

Case No : Wp. State Admin Trib (WPST) No. 68 Of 2018

Biman Behari Thakur

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-09-2019

Acts Referred:

Citation : (2019) 09 CAL CK 0157

Hon'ble Judges : Saugata Bhattacharyya, J; Dipankar Datta, J

Bench : Division Bench

Advocate : Lal Ratan Mondal, Dilip Kumar Sadhu, Swapan Kumar Datta, Tapas Kumar Dey

Final Decision : Allowed

Judgement

1. The unsuccessful original applicant in O.A. 930 of 2017 is the writ petitioner before us, challenging the judgment and order dated 20th February, 2019 passed by the West Bengal Administrative Tribunal dismissing such application on merits.

2. The petitioner had worked as a Tehsil Mohurrir on commission basis in phases during 1978 to 1984. Pursuant to an order dated 29th September, 1993 passed by a learned Judge of this Court in C.R. No. 7592 (W) of 1991, the respondents had framed a scheme for absorption of Tehsil Mohurrirs as Group-D employees in the Land & Land Reforms Department, Government of West Bengal. The petitioner was found eligible and selected for absorption. He was appointed on 20th June, 2007 and ultimately retired on attaining the age of superannuation on 29th February, 2016. Upon his absorption and till retirement on superannuation, the petitioner had served the department for 8 years 8 months and 10 days. In order to be eligible for pension, the petitioner was required to put in qualifying service of 10 years. Since he fell short of 10 years service, he was denied pension. Aggrieved thereby, the petitioner had approached the tribunal with the original application which has been dismissed as noticed above on the ground that the Government had the liberty to condone a deficiency of 6 months service but not beyond; and since the petitioner's service was deficient by over 1 year,

the Government had no discretion left with it to grant the benefit as prayed for by the petitioner.

3. It appears from the judgment of the tribunal that a contention was raised on behalf of the petitioner to the effect that examination of his medical fitness and verification of antecedents by the police were completed in the year 2000, but appointment had not been offered to him contemporaneously on a Group-D post in terms of the scheme, for which he was compelled to approach the tribunal by filing O.A. 645 of 2004; such application was disposed of on 17th March, 2005 by the tribunal directing the Director of Land Records and Survey and Joint Land Reforms Commissioner, West Bengal to consider the petitioner's claim for appointment within a period of 4 months. It was upon compliance of such order that the petitioner was ultimately offered appointment on 20th June, 2007.

4. Referring to a decision of a co-ordinate Bench of this Court reported in (2016) 4 WBLR (Cal) 574 (State of West Bengal & Ors. Vs. Aparesh Chandra Datta & Ors.), it was also contended on behalf of the petitioner before the tribunal that he ought not to be penalized for the inordinate delay on the part of the respondents in giving appointment to him in June, 2007 although he was selected and found fit for appointment in all respects in the year 2000. In *Aparesh Chandra Datta (supra)*, it was held by the co-ordinate Bench that the appellants by taking advantage of their own wrong could not have penalized the respondent by refusing to grant pension on the ground of deficiency of 2 months and 1 day in qualifying service. The tribunal proceeded not to apply the law laid down in *Aparesh Chandra Datta (supra)* on the ground that the Bench itself had observed that such decision would not operate as a precedent.

5. We are of the considered view, upon reading paragraph 25 of the decision in *Aparesh Chandra Datta (supra)*, that the tribunal misunderstood and misinterpreted its contents. It was clearly observed that the order would not create any precedent for those, inter alia, who 'were not affected by the misdeed of the authority concerned'. Therefore, the decision would be a precedent for cases where an employee is affected by the misdeed of the authority concerned. If at all there has been any misdeed to deprive the petitioner an appointment in 2000, there is no reason why he shall not be entitled to the benefit of the ratio of the decision in *Aparesh Chandra Datta (supra)*.

6. Mr. Datta, learned Additional Government Pleader appearing for the respondents has, however, referred to and relied on the decisions of co-ordinate Benches of this Court in WPST 11 of 2011 (*Krishna Das Gupta Vs. State of West Bengal & Ors.*) and WPST 324 of 2012 (*Arup Kumar Sarkar Vs. State of West Bengal & Ors.*), which were relied on by the tribunal, to spurn the challenge and has contended that the writ petition deserves in limine dismissal based on such decisions.

7. We have perused the decisions and find that law has been laid down therein to the effect that there cannot be retrospective appointment. We have failed to

comprehend as to how such decisions could be of any assistance for the respondents to successfully urge the tribunal to dismiss the original application. The petitioner has never claimed service benefits from any date prior to his appointment on 20th June, 2007; instead, what he claims is that he should have been appointed immediately after examination of his medical fitness and verification of antecedents were over and since the delay in issuing appointment in his favour is not attributable to him, he does not claim any service benefit but only claims condonation of the deficient period of service to be entitled to pension and other retiral benefits. The tribunal evidently omitted to consider the petitioner's claim in the proper perspective. We are, thus, of the opinion that the tribunal proceeded to dismiss the original application of the petitioner based on misapplication of the ratio of the unreported decisions of this Court.

8. Not too long ago, we had the occasion to deal with a similar controversy. While disposing of WPST 24 of 2019 (Ram Nagen Chowdhury Vs. The State of West Bengal & Ors.) by our order dated 15th July, 2019, we found that the petitioner therein fell short of qualifying service by about 10 months. There too, a similar point was raised to the effect that it was due to official inaction and/or negligence that the offer of appointment was issued late, resulting in such petitioner falling short of qualifying service by 10 months.

9. In paragraphs 9, 10 & 11 of Ram Nagen Chowdhury (supra), we observed as follows :-

"09. However, it cannot be lost sight that if the petitioner had been favoured with an order of appointment within two months of his selection for appointment on the post of Constable, he could have served the Government in excess of the period for which he had actually served and, therefore, may have qualified for pension.

10. The reasons, for which appointment of the petitioner was delayed till almost a year after his selection, is not too clear from the materials-on-records. It is because of such reason that we are minded to grant the petitioner limited relief, to the extent that the matter must be re-considered at the level of the Additional Chief Secretary and Home Secretary to the Government of West Bengal to ascertain whether the appointment of the petitioner was delayed for any fault attributable to him or not.

11. In the event no fault can be attributed to the petitioner and it is found that official formalities consumed unreasonably long time to be complied with, which by exercise of due diligence could have been avoided, the Additional Chief Secretary and Home Secretary may, as a special case and without creating any precedent, allow the prayer of the petitioner for pension. It must be realised by one and all that it is pension and other retiral benefits that a retired employee looks up to for sustenance in the winter years of his life. If the provisions in Part-IV of the Constitution are to be given life, situations such as the present one afford the Government of the people to do at least something for the people and

thereby keep the preambular promise of equality and justice enshrined in the Constitution."

10. We see no reason not to follow such decision and make similar directions. After-all, it is a matter of factual determination as to whether examination of medical fitness and verification of antecedents of the petitioner were completed in 2000 or not, as claimed by him. If indeed that be so, it would require a further assessment as to whether there were adequate vacancies for accommodating the petitioner. If vacancies did exist and the petitioner was not appointed till at least 20th June, 2007, there is no reason as to why the deficient period of service may not be condoned for the reasons spelt out in paragraph 11 of the decision in Ram Nagen Chowdhury (supra). The petitioner, if appointed in 2005 instead of 2007, could have put in qualifying service and been entitled to pension.

11. In that view of the matter, we set aside the order of the tribunal impugned in this writ petition and direct the Principal Secretary, Land & Land Reforms Department, Government of West Bengal to re-consider the claim of the petitioner and to ascertain whether his appointment was delayed for any fault attributable to him or not. In the event, the fault is not attributable to him but the delay in appointing the petitioner occasioned only because official inaction and/or negligence, the principal secretary shall proceed to take an informed decision in the light of the decision in Aparesh Chandra Datta (supra) and Ram Nagen Chowdhury (supra) referred to above as well as the aforesaid observations to take the claim to its logical end as early as possible but not later than 4 months from date of receipt of a copy of this order.

12. It is needless to observe that if the claim of the petitioner is regretted once again, the order must have the support of reasons. If the prayer is granted, follow-up steps according to law shall be taken at the earliest.

13. The writ petition stands allowed to the extent as mentioned above, without there being no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.