

(2014) 04 CAL CK 0115
In the Calcutta High Court
Case No : W.P. No. 14000(W) of 2013

Binoy Krishna Mondal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 04 CAL CK 0115

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Narayan Chandra Mondal, Ms. Anita Khatri and Ms. Sipra Maity,
Advocate for the Appellant; Biswajit Sau, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J.—The short question involved in the present writ petition is the date from which the petitioner's appointment is to be counted, i.e., whether it should be counted from December 31, 1999 or from December 28, 2011.

2. On November 1, 1992 the Pradhan of the Rpumari Gram Panchayat issued an appointment letter to the petitioner.

3. In the year 1997 the respondents authorities tried to fill up the vacancy for the Class IV staff of the said Panchayat when the petitioner moved his first writ petition praying for regularization of service. The writ petition after a contested hearing was disposed of by a learned single judge on September 16, 1999 whereby the Rule was made absolute in terms of the prayers made in that writ petition. It was directed that if there was no post of the type mentioned in the said prayer a post was to be created for that purpose with appropriate benefits carrying a monthly basic pay of at least Rs. 700/-. It was further directed that the petitioner's employment and receipt of monthly benefits should not be disturbed in any manner until the creation of such post and giving of employment to him in that post. The formalities in this regard were to be

completed at least by December 31, 1999.

4. The respondents filed an appeal and although they initially obtained an order of status quo a Division Bench by an order, dated February 1, 2005 dismissed the appeal as infructuous.

5. The petitioner says that from the Service Book he came to know later that he has been given the appointment on December 28, 1999 as a Gram Panchayat Karmi.

6. The principal grievance of the petitioner is that even though he was eligible to get appointment with effect from December 31, 1999 the respondents authorities had deliberately issued the appointment letter after about 12 years and thereby has caused serious prejudice to the petitioner.

7. The respondent no. 6 in turn has contested the writ petition by filing an affidavit-in-opposition. The only point which seems to have been taken is that the petitioner was appointed in the service on December 28, 2011 and he has accepted the service without any objection. After appointment in the service the petitioner was getting salary regularly. From December 31, 1999 to December 27, 2011 he was not appointed in the service and he has not worked for the government. The respondent no. 6 has further mentioned that the petitioner has accepted the service benefit till May 6, 2013 and after such a long time he cannot claim the appointment in his service from December 31, 1999.

8. In the affidavit-in-reply the petitioner had by and large reiterated his stand in the writ petition and denied the specific contention of the respondent no. 6 that he was appointed in the service on December 28, 2011. He still maintained that he was appointed on November 1, 1992 and since that date he had been discharging his duties regularly. He had also denied that he had accepted his appointment without any objection.

9. Thus the whole question boils down to the date from which the petitioner's service is to be reckoned.

10. I, for one, do not find any reason why the petitioner's appointment should not be regularized with effect from December 31, 1999. A learned single judge of this court while disposing of the earlier writ petition had held that even if there was no post the petitioner had some work and for that work there was a necessity for five years. The court directed the respondents to regularize the writ petitioner as a model employer and ultimately passed the direction which had been mentioned earlier. The order even recorded that if there was no post of the type as prayed for by the petitioner a post was required to be created for that purpose with appropriate benefits. The formalities in this regard was directed to be completed latest by December 31, 1999.

11. Nothing transpires from the affidavit-in-opposition about when the post was created and when the petitioner was offered the appointment. The stand of the respondent also is not very clearly discernable from the sketchy affidavit used by

the respondent no. 6. Why in the Service Book his date of appointment was shown as December 28, 2011 is not very clear. The statement by the deponent in the affidavit-in-opposition that from December 31, 1999 to December 27, 2011 the petitioner was not appointed and had not worked for the government is vague and does not really specifically answer the issue. The very specific stand of the petitioner that after the preparation of the Service Book he came to know that his date of first appointment was shown with effect from December 28, 2011 have not been controverted by the answering respondent.

12. Assuming that the petitioner was appointed on December 28, 2011 it was imperative on the part of the respondents to annex an appointment letter by which he was allegedly appointed with effect from that date. In the absence of the same and particularly without any denial of the statement made by the petitioner the statement made in the writ petition that the petitioner had come to know only after the preparation of his Service Book that his first appointment has been shown with effect from December 28, 2011 is to be accepted.

13. That apart the stand of the respondent that from December 31, 1999 till December 27, 2011 he did not work for the government runs counter to the direction given by this court that till a post is created the petitioner's employment and receipt of monthly benefits should not be disturbed in any manner and the petitioner too in his turn had very specifically claimed that since the date of his first appointment he had been discharging his duties regularly.

14. Since the respondents have not produced any fresh appointment letter issued in favour of the petitioner it must be taken that the date shown in the Service Book as the first date of appointment was arbitrary. In any case, this violated clearly the order of the learned single judge in the earlier writ petition.

15. It is not understood why the answering respondent in the affidavit has placed so much emphasis on the petitioner's accepting the salary without any objection. What else was the petitioner expected to do than to accept the salary? How else a Class IV staff is expected to conduct himself when he has not been getting his salary? Assuming that the allegation is correct it does not amount to waiver and the petitioner does not lose any right. Even if there is any truth in the allegation made by the respondent this has no significance and cannot really deprive of the petitioner of his right to get the employment from the date as directed by this court in the earlier order.

16. I thus find sufficient merit in the submission of the petitioner and absolutely no merit in the stand taken by the respondent no. 6. The writ petition is allowed and I direct the respondents authorities to treat the petitioner's service with effect from December 31, 1999 as directed by this court in the earlier writ petition instead of December 28, 2011. I further direct the respondents to calculate the arrear salary from the date it was last paid to the petitioner till December 28, 2011 and to pay the same to the petitioner along with interest calculated at the rate of 8 per cent per annum thereon within six weeks from the

date of the communication of this order.

17. The writ petition is allowed.

18. There shall be no order as to costs.

19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.