
(2014) 04 CAL CK 0061
In the Calcutta High Court
Case No : W.P.S.T. No. 31 of 2014

Pastu Deb Singha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 4 CHN 32

Hon'ble Judges : Tapash Mookherjee, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : Parimal Kumar Dwari and Mr. Prasanta Behari Mahata in WPST Nos. 31 of 2014 and 359, 355, 380, 354, 366 of 2013, Advocate for the Appellant; Tapan Kumar Mukherjee, Mr. Md. Hasanuz Zaman in W.P.S.T. No. 359 of 2013, Mr. Joytosh Majumder, Mr. Tulsidas Roy in W.P.S.T. No. 31 of 2014 and in W.P.S.T. No. 366 of 2013, Mr. Joytosh Majumder, Mr. Sirsany Bandopadhyay in W.P.S.T. Nos. 354, 355 of 2010, Mrs. Chaitali Bhattacharya and Ms. Tapati Samanta in W.P.S.T. No. 380 of 2010 for State, Advocate for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—A common question is involved in the present writ petitions and therefore, they have been heard together. The petitioner in each of these petitions was engaged as a seasonal worker with the Kangsabati Canals Division No. I. The Executive Engineer of Kangsabati Canals Division No. I issued a letter to the Secretary, Irrigation and Waterways Department for regularisation of the services of the petitioners and several other persons. Each of the petitioner was made permanent in service on 18th April, 1996. They continued to work as such till they reached their respective ages of retirement. However pension was not paid to the petitioners. The petitioners filed individual application before the West Bengal Administrative Tribunal seeking the payment of pension. The applications were dismissed by the Tribunal.

2. Being aggrieved by the decision of the Tribunal the petitioners preferred individual writ petitions before this Court. The Division Bench of this Court, of

which one of us (Nishita Mhatre, J.) was a member, did not interfere with the order passed by the Tribunal as the petitioners lacked the qualifying service for payment of pension. However, the Division Bench directed the authorities to reconsider the claim on each of the petitioners in the light of the judgment of another Division Bench of this Court in the case of Haradhan Mahato v. State of West Bengal & Others (WPST No. 184 of 2010).

3. Accordingly the respondents reconsidered the respective claims of the petitioners for disbursing pension and gratuity under the West Bengal (Death-cum-Retirement Benefit) Rules [hereinafter referred to as "DCRB Rules"]. However, the petitioners' claims were rejected once again by the respondents. The petitioners therefore preferred individual applications again before the Tribunal seeking the release of pension to them under the DCRB Rules.

4. The Tribunal by separate judgments dismissed the applications on the ground that the decision of the Division Bench in of Haradhan Mahato v. State of West Bengal & Others (WPST No. 184 of 2010) did not lay down a general proposition of law to the effect that an employee who did not have the requisite qualifying service was entitled to pension. However, the Tribunal directed in each of these applications that the petitioners' service should be counted from 18th April, 1996 and not from 1st May, 1997 as had been done by the respondents.

5. There is no dispute that the petitioners in each of these writ petitions were initially appointed on a temporary basis. That service was followed, without a break, by permanent service. The petitioners continued to work as such till each of them reached the age of superannuation. However, according to the respondents there is a deficiency of qualifying service in respect of each of the petitioners and therefore, they are not entitled to pension. The respondents admittedly have not reckoned the service rendered by the petitioners as temporary employees prior to being made permanent in service for the purposes of calculating the qualifying service.

6. We have, by a separate judgment delivered today in WPST No. 532 of 2010, decided the issues which arise in these petitions. We have held that under the DCRB Rules, the service rendered by an employee on a temporary basis continuously, prior to his being conferred with the permanent status must be taken into account for computing qualifying service for payment of pension. For the reasons stated in the judgment delivered in WPST No. 532 of 2010 these petitions are also allowed.

7. However, where the petitioners have not rendered qualifying service of ten years even after reckoning the period of service rendered by them as temporary employees, they would not be entitled to pension as a matter of right. In such cases the Government will apply Rule 36 of the DCRB Rules under which it is vested with the power to condone the deficiency in the qualifying service up to six months. An employee may also apply to the Governor of the State of West Bengal for the relaxation of the Rules under Rule 4 of the DCRB Rules.

8. All arrears of pension shall be paid to the petitioners by 30th July, 2014 and the pension will be paid to them every month hereafter.

9. There shall be no order as to costs.

10. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.