

**(2018) 12 CAL CK 0075**  
**In the Calcutta High Court**

**Case No :** General Application No. 3984 Of 2017, Writ Petition No. 495 Of 2017

Rajib Dutta

APPELLANT

Vs

Accountant General West Bengal & Ors

RESPONDENT

---

**Date of Decision :** 18-12-2018

**Acts Referred:**

**Citation :** (2018) 12 CAL CK 0075

**Hon'ble Judges :** Arindam Sinha, J

**Bench :** Single Bench

**Advocate :** Kamollesh Bhattacharya, Ashim Kr, Halder, Shymal Sarkar, Moupiya De Basu, Sandip Kr, Bhattacharya, S. Dutta, P. Bandhopadhyay, M. Maity

**Final Decision :** Disposed Off

---

## Judgement

The Court :-Petitioner was appointed in post of clerk. His appointment was upon participation in recruitment process condoning age bar pursuant to interim order dated 19th January, 2010 made in earlier writ petition WP 17226 (W) of 2009. That writ petition then stood disposed of. He is again before Court by this writ petition seeking for the authority being directed to take into account 22 months of his past service as un-approved non-teaching staff of Gobordanga Hindu College, as notional service, for purpose of his qualifying service to entitle him to pension.

On earlier occasion Mr. Dutta, learned Advocate, appearing on behalf of State, had submitted, West Bengal Non-Government College Employees' and Day Students' Home Employees (Death cum retirement benefits) Scheme, clause 7 (b) provides for continuous service of whole time approved employee as shall count as qualifying service. The scheme gives meaning of 'approve' and under clause 8, entitlement to pension on completion of 10 years qualifying service. Petitioner is short 22 months. Relaxation under the scheme can be made only to extent of six months.

He had relied on several judgments of Supreme Court.

i) Punjab SEB v. Jagjiwan Ram reported in (2009) 3 SCC 661, to paragraph 10 where Supreme Court said if the statute or scheme under which service of work-charged employee is regularised does not provide for counting of past service, the work charged employee cannot claim benefit of such service for the purpose of fixation of seniority.

ii) Dhyan Singh vs. State of Haryana reported in (2002) 10 SCC 656 in which Supreme Court said it had not been shown any rule or regulation of the State, which confer pensionary benefits for service under a scheme, rendered by appellants, to be counted.

iii) Union of India vs. Deoki Nandan Aggarwal reported in 1992 Supp (1) SCC 323, to paragraph 14 to submit, Supreme Court had declared, power to legislate has not been conferred on the Courts. Courts shall decide what the law is and not what it should be.

Today, Mr. Bhattacharya learned Advocate appearing on behalf of petitioner hands up copies of order dated 23rd August, 2017, of a learned Single Judge of this Court in WP 19132(W) of 2017 [Shyama Prasad Mukherjee -Vs. State of West Bengal & Ors.] and order dated 6th March, 2018 made pursuant thereto by Additional Chief Secretary, Government of West Bengal, Finance Department. He submits, therefore, there should be direction upon the authority to take into account 22 months from his client's past service on notional basis to find him qualified to be entitled to pension. Mr. Dutta reiterates his submissions earlier made and recorded as above. There is no provision for further relaxation beyond 6 months in his submission.

It appears from order dated 23rd August, 2017 (supra) appropriate authority was directed to take reasoned decision on representation of petitioner therein, in accordance with law and applicable rules/regulations/circulars/notifications including order dated 8th March, 2018 in WP 1029 (W) of 2016 [Madhdusudan Mukherjee Vs. The State of West Bengal & Ors ]. Petitioner in writ petition dealt with by said order was appointed as ad hoc clerk in concerned college in year 1991 and his service approved from 28th September, 2007. There is similarity of facts, at least, to extent said petitioner and petitioner herein both served as non-teaching staff of colleges in West Bengal and their appointments were subsequently approved. Both had fallen short on qualifying service. By order dated 6th March, 2018, petitioner in WP 19132 (W) of 2017 got counted his past unapproved service of period one year six months and twenty seven days to be added to his period of approved service to find him qualified for pension. This was done by appropriate authority being, as aforesaid, Additional Chief Secretary, Government of West Bengal, Finance Department.

Said appropriate authority is directed to consider present petitioner's case of counting 22 months of his past unapproved service being counted in his qualifying service to entitle him to get pension. This direction upon said authority is being made since State is respondent in this writ petition and said authority is

a functionary of it. Said authority will consider and dispose of this claim of present petitioner within period of four weeks from date of communication of this order as made known to petitioner. It is to be noted petitioner expects to be entitled since persons similarly placed have been found to be entitled.

With above directions and observation, this writ petition is disposed of.