

(2016) 03 CAL CK 0099
In the Calcutta High Court

Case No : M.A.T. No. 1607 of 2015 (C.A.N. No. 12340 of 2015 and C.A.N. No. 12341 of 2015)

State of West Bengal

APPELLANT

Vs

Aparesh Chandra Datta

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

West Bengal Recognised Non-government Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981 — Rule 7(e)(iv)

Citation : (2016) 2 CalHCN 494 : (2016) 4 WBLR 574

Hon'ble Judges : Jyotirmay Bhattacharya and Ishan Chandra Das, JJ.

Bench : Division Bench

Advocate : Ms. Chaitali Bhattacharya and Ms. Sukla Das Chandra, Advocates, for the Appellant; Mr. Dilip Kumar Maity, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Jyotirmay Bhattacharya, J.—This mandamus appeal and the application for condonation of delay filed in connection with the said appeal have been assigned to this Bench for its disposal by the Hon'ble Chief Justice.

2. The instant mandamus appeal was filed beyond the prescribed period of limitation. There was 194 days delay in filing this appeal.

3. The reason for the delay has been explained by the appellants in this application. It is alleged therein that slow movement of the file from one table to the other of the State-appellants was the primary reason for the delay in filing this appeal. It is further alleged therein that the misplacement of the certified copy of the impugned order from the lawyer's chamber is the other ground for which such delay was caused.

4. Considering the fact that no individual officer of the Government organisation can take the ultimate decision for filing an appeal, the delay is normally caused in all appeals where the State is the appellant.

5. Considering the un-controverted statements made by the appellants in the said application for condonation of delay, we are of the view that the reason for the delay in filing this appeal has been sufficiently explained by the appellants in this application.

6. Accordingly, delay in filing the appeal is condoned.

7. The application for condonation of delay thus, stands allowed.

8. Let the appeal now be registered.

9. Immediately after the delay in filing the appeal is condoned, we are requested by the learned advocates appearing for the parties to dispose of the appeal on merit by dispensing with the requirement of filing paper book in this appeal. We find that the papers which are necessary for disposal of the appeal, are before us. Copy of the order passed by Justice Mohitosh Majumdar (as His Lordship then was) on 13th March, 1991 in C.O. No. 11154(W) of 1989 (Dibakar Pal & Ors. v. State of West Bengal & Ors.) has also been produced before us by the concerned department pursuant to the direction passed by us on 4th March, 2016.

10. Finding that the necessary papers are already before us, we have decided to hear the appeal by dispensing with the requirement of filing paper book in this appeal.

11. By the impugned order, the learned Single Judge of this Court directed the concerned department to condone the deficiency of qualifying service of two months and one day in favour of the writ petitioner and to allow him to get pension in terms of the West Bengal Recognised Non-Government Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981. The entire exercise was directed to be completed within a period of six weeks from the date of communication of the said order.

12. Ms. Bhattacharya, learned advocate appearing for the appellants submits that in order to be eligible for pension, an employee should complete at least ten years of qualifying service under Rule 8 of the aforesaid Rule. She submits that admittedly, the writ petitioner failed to satisfy the said condition.

13. As such, the writ petitioner according to Ms. Bhattacharya, is not entitled to pension. She further submits that as per the "Note" appended to Rule 7(e)(IV), the deficiency period can be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity or family pension. It is further provided therein that in other cases power should be restricted to the employees drawing pay not exceeding Rs. 425/- per month at the time of retirement on invalid or compensation pension.

14. By drawing our attention to the said Rule, she submits that the deficiency of service is not condonable by the concerned authority if it does not satisfy any of the conditions as mentioned in the "Note" appended to Rule 7(e)(iv). She thus submits that since none of the conditions as mentioned in the "Note" appended

to Rule 7(e)(iv) is satisfied in the instant case, the authority concerned refused to condone such deficiency of service of the writ petitioner. She thus, tried to justify the action of the concerned authority by relying upon the aforesaid Rule.

15. Let us now consider as to how far the concerned authority was justified in doing so in the facts of the present case.

16. Here is the case where we find that the writ petitioner along with several other similarly affected persons moved a writ petition earlier before this Court complaining that the concerned authority illegally denied giving appointment to the petitioner therein. The said writ petition which was registered as C.O. No. 11154(W) of 1989, was disposed of by the learned Single Judge of this Court with the following direction: " in view of the pronouncement by this Court in the aforesaid appeal on the basis of the judgement of the learned Single Judge, I grant similar benefits to the petitioner by directing the respondents to appoint the petitioner as primary teacher against the available vacancies within a period of three months from date." The said order was passed on 13th March, 1991. The time limit which was fixed for giving appointment to the petitioners therein, expired on 12th June, 1991.

17. Despite the State-respondent was represented by its counsel while the said writ petition was heard and the order was passed in their presence, appointment order was not given to the petitioner herein till 1999. It is only on 28th June, 1999 appointment order was issued to the petitioner herein by the Chairman, Ad-hoc Committee, Nadia District Primary School Council, during the pendency of a contempt proceeding.

18. Thus, eight years after passing of the said order, the writ petitioner was ultimately allowed to join his service in pursuance of the appointment letter issued by the Chairman, Adhoc Committee as aforesaid. He thus, lost eight years of his service for no fault of his own.

19. The concerned authority now by taking advantage of their own wrong cannot penalise the petitioner by refusing to grant pension to the petitioner on the ground of deficiency of two months and one day service of the petitioner.

20. We, thus, hold that this is a fit case where the deficiency of two months and one day of service of the petitioner should have been condoned by the concerned authority.

21. We condone the deficiency period of service of the petitioner and hold that he is entitled to get pension.

22. We thus, maintain the impugned order passed by the learned Trial Judge and direct the concerned authority to disburse his pension including all arrear pensions. The time limit which was fixed by the learned Trial Judge for compliance of His Lordship's said order, is extended for a further period of four weeks from date.

23. The appeal and the application filed in connection therewith are all disposed of.

24. We thus, make it clear that we maintain the impugned order simply because of the fact that the writ petitioner herein was a beneficiary of the order passed on 13th March, 1991 in C.O. No. 11154(W) of 1989 and he was deprived of enjoying his eight years of service for no fault on his part and it is the authority concerned who is responsible for not allowing him to enjoy his eight years of service.

25. This order will not create any precedence for those who are not the beneficiary of the order passed in the writ petition being C.O. No. 11154(W) of 1989 and were not affected by the misdeed of the authority concerned.

26. Let the writ file being C.R. 15733(W) of 1993 containing the order passed by the Hon''ble Justice Mohitosh Majumdar (as His Lordship then was) on 13th March, 1991 in C.O. 11154(W) of 1989 be sent back to the concerned department immediately.

27. Urgent Photostat certified copy of this order, if applied for, be supplied to the Learned advocates for the parties immediately.

28. Ishan Chandra Das, J.—I agree.