

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

**Present :-
The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

**J U D G M E N T
-of-**

Case No. O.A. - 345 of 2019

Sadhan Chandra Deb Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Sugata Bhattacharyya,
Mr. Soumyojyoti Chandra,
Advocates**

**For the State Respondents:- Mr. Goutam Pathak Banerjee,
Mr. Sourav Bhattacharjee,
Advocates**

Judgment delivered on : 21st April, 2022

**The Judgment of the Tribunal was delivered by:-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following reliefs:-

“(a) To pass an order quashing the order dated March 6, 2019 of the Respondent No. 3 being Annexure ‘P-5’ of the instant Original Application and directing the Respondents to forthwith release Pension and other retirement benefits to the Applicant upon taking into consideration his total service of over 33 years rendered in the Maldah Museum as Assistant Curator from December 3, 1984 to August 5, 2008 and Curator from August 6, 1984 to December 31, 2017;

(b) To pass such further order or orders, as may render complete relief and justice to the Applicant.”

2. As per the applicant, in terms of order No. 1369 dated 20.11.1984, the applicant joined as Assistant Curator in Maldah Museum on 03.12.1984 in the scale of pay of Rs. 300- 600/-. As the recruitment of Assistant Curator was made through an Administrative Process by the Managing Committee of Maldah Museum as per Memorandum No. 20039/1 – ICA dated 02.09.1980, in the mean time, by an order No. 2898 ICA dated 02.09.1979, the State Government took over the management of the Maldah Museum with immediate effect and the respondent No. 2 was appointed as its Administrator.

3. Subsequently, the State Government vide Notification No. 2020 – ICA dated 06.08.2008 created the posts of one Curator, one Group – D, one Night Watchman in the Maldah Museum to ensure smooth and effective functioning of the same in the scale of pay of Rs. 6000 – 12,000/-, Rs. 3350 – 6325, Rs. 2600 – 4175/- and Rs. 2600 – 4175/- respectively.
4. Keeping parity with the aforesaid Notification, the State Government issued another Notification No. 2021 – ICA dated 06.08.2008, regularizing applicant and other employees attached to the Maldah Museum with immediate effect. The applicant, who was working as Assistant Curator of Maldah Museum, was posted as Curator of the same Museum in the scale of pay of Rs. 6000 – 12,000/-. According to the applicant, though there was no requirement to issue further order of appointing the applicant to the post of Curator of Maldah Museum, yet the respondent no. 2 issued another order No. 84/MM dated 05.09.2008 by way of appointing the applicant to the post of Curator of Maldah Museum with retrospective effect from 06.08.2008. It has been further submitted that in the order dated 05.09.2008 (Annexure ‘P – 2’), it has been clearly indicated that the applicant had been functioning as Assistant Curator of Maldah Museum. Further he had joined as Curator to the said Museum on 06.09.2008.

As the applicant is due to retire from service on 31st December, 2017, the Vice Chairman of Maldah Museum Managing Committee i.e D.M., Maldah by his letter dated 24.08.2010 strongly recommended for regularization of the service of the applicant along with two other employees of the Maldah Museum and requested the Special Secretary-in-charge of the Information and Cultural Affairs Department, Govt. of West Bengal to regularize the past service and grant commensurate pay

and allowances of the applicant. But there was no response from the State Respondents in this regard.

5. Hence the applicant sent a representation to the Special Secretary-in-charge, I & CA Department praying for counting and regularizing his past service since joining in the post of Assistant Curator vide letter dated 03.12.2011. In respect of that several communication was also made between the respondent 1 & 2 and respondent no. 2 under his Memo dated 21.02.2013 enclosed a copy of Memo No. 21.02.2013. In the said Memo, the respondent no. 3 instructed the respondent no 1 to direct respondent no. 2 to take necessary action to declare the employment of the applicant and two other employees working in the Maldah Museum as substantive and permanent to their previous post so that the past service of the incumbents may be considered in respect to their pensionary benefit.
6. Finally, by a Memorandum dated 11.03.2013, the respondent no. 2 declared employment of the applicant as Assistant Curator to be substantive and permanent for the period from 3rd December, 1984 to 5th August, 2008. Though vide letter dated 17.10.2016, respondent no. 2 made a strong recommendation to the respondent no. 1 for taking steps for regularization of uninterrupted period to enable him to get pension and other retiral benefits to the applicant. But nothing happened. Ultimately the applicant sent a representation to the respondents through respondent no. 2 on 04.08.2017 (Annexure 'P – 3') praying for counting of past service, fixation and pay accordingly. Since after passage of considerable time after his retirement, the respondents did not take any steps to release retiral benefit to the applicant, the applicant filed an application before this Tribunal in O.A. No. 460 of 2018, which was disposed of by this Tribunal

vide order dated 16.11.2018 directing the respondents to pass a reasoned order (Annexure 'P – 4'). Accordingly, the applicant appears before the respondent no. 3 on 29.01.2019. However, by an impugned order dated 06.03.2019, rejected the prayer of the applicant (Annexure 'P – 5).

It has been further submitted by the respondent that as the applicant was appointed as a temporary basis, which was not sanctioned by the Finance Department, therefore, that period cannot be treated as a part of the service after regularizing. Being aggrieved with, he has approached this Tribunal.

7. During the course of the hearing, the counsel for the applicant has referred the judgement dated 30.04.2014 passed in WPST No. 532 of 2010 (Nemai Ch. Chatterjee & Others –Vs- State of West Bengal & Others) and has submitted that as per Rule 22 of D.C.R.B. Rules, the past service as a temporary measure has to be considered for the purpose of pension and pensionary benefit. Therefore, the applicant has prayed for extension of benefit of the judgement dated 30.04.2014.
8. The respondents have filed their reply, wherein it has been submitted that the applicant was appointed as temporary on ad hoc basis as Assistant Curator vide Memo. Dated 219 of 1980. However, since he was not a government employee, therefore, no past service can be counted for the service rendered as an Assistant Curator. Further as the applicant did not complete the 10 (ten) years qualifying service, therefore, he is not eligible for pensionary benefit.
9. The applicant has filed his rejoinder, wherein it has been submitted that by Notification dated 20.02.1979, the Government of West Bengal took over the management of Maldah Museum

and appointed the Sub-divisional Officer, Maldah as its Administrator with immediate effect. Subsequently, on 17.03.1983, the Government of West Bengal issued an advertisement in the daily news paper (The Statesman), inviting the applications for the post of Assistant Curator of Maldah Museum prescribing age qualification, working experience etc. for the same. In response to that, the applicant made an application for appointment of the post of Assistant Curator and appears before the Interview Board on 23rd August, 1983. Finally vide order no. 1369 was issued by the District Information Officer and Member-Secretary, Maldah Museum appointing him as the Assistant Curator of Maldah Museum on 03.12.1984. Therefore, his service should be taken into account for the purpose of pension and pensionary benefit.

10. I have heard the parties and perused the records. It is noted that the management of the Maldah Museum was taken over by the State of Government vide Memorandum dated 20.09.1979 by the order of the Governor. Subsequently, the applicant was selected through the administrative process of Managing committee vide order dated 20.11.1984. Thereafter, the applicant was appointed as Curator of the Maldah Museum on regular basis vide order dated 05.09.2008 (Annexure 'P'). The applicant was due to retire of superannuation on 31.12.2017. The Member Secretary, Maldah Museum Managing Committee vide his Memo dated 11.03.2013 had declared the following:

“In pursuance of letter No. 390/2012-2013 dated 21.02.2013 read with letter No. 3811-ICA/IC/O/17A(XIII)-44/10 dated 05.02.2013, the employment of following 3 (Three) employees of Malda museum shown below is hereby declared to be substantive and

permanent to their respective previous post from their respective date of joining as mentioning in the table below.

Sl. No.	Name of the employee	Previous post hold	Date of Joining	Previous post hold up to
1.	Sadhan Chandra Deb	Assistant Curator	03.12.1984	05.08.2008
2.	Sumita Chakraborty (Sarkar)	Clerk-cum-Guide	02.04.1983	05.08.2008
3.	Bhupesh Paswan	Peon-cum-Pharash	02.04.1983	05.08.2008

Thus memorandum is issued after strict complying of G.O. No. 6059-F dt. 25.06.1979 and G.O. No. 9135-F dt. 10.09.2002 read with G.O. No. 1030 dt. 08.02.2006.

The aforesaid 3 (Three) employees have been rendering continuous and satisfactory service since their respective date of joining and have been continuing till date.

This may kind be taken into account that the past service of 3 (Three) employees of Malda Museum has not been counted and regularized inadvertently in G.O. No. 2020-ICA dated 06.08.2008 and G.O. No. 2021-ICA dated 06.08.2008.

According to the G.O. No. 2020-ICA dated 06.08.2008 and G.O. No. 2021-ICA dated 06.08.2008 , the aforesaid incumbents namely 1) Sri Sadhan Chandra Deb has been working in Malda Museum as curator from 06.08.2008, 2) Sumita Chakraborty (Sarkar) has been working as clerk from 06.08.2008, 3) Sri

Bhupesh Paswan has been working as Peon (Group-“D”) from 06.08.2008 with great care and responsibilities.”

Subsequently, Joint Secretary, Government of West Bengal, Department of Information and Cultural Affairs vide his letter dated 25.09.2014 had rejected the claim of the applicant on the ground that since the applicant was appointed as regular basis as per the Cabinet decision vide order dated 29.07.2008 only and the required service is less than ten years, therefore, the applicant is not entitled for any pensionary benefit. It is not disputed that the applicant was regularized, however, the applicant has claimed for counting of past service as rendered by him on temporary basis since 1984.

It is also noted that since 20.11.1984 till the date of retirement the applicant was working in the Maldah Museum Rule 22 of D.C.R.B. Rule stipulates, inter alia:

- “(1) Any temporary or officiating service under Government followed without interruption by confirmation or by declaration as quasi-permanent or permanent in status in the same or another post shall however count in full as qualifying service except that shall however count in full as qualifying service except that-**
- (a) the period of temporary or officiating service in and establishment where contributory provident fund benefits are allowed shall not count unless the Government contribution including interest is refunded in full to Government;**
 - (b) the period of service paid from contingencies shall not count.**

(2) Past service whether permanent or temporary rendered by a Government servant of the undivided province of Bengal who at the time of Partition opted finally for service in Pakistan but returned to West Bengal and was absorbed in the State Government not later than 31st December 1951 and subsequently made permanent, will count towards pension provided the service was otherwise qualifying. The period of service rendered under the Government of East Pakistan after Partition and the period during which no duty was performed will neither count towards pension nor constitute a break for a determining the total length of service.”

Further the Hon’ble High Court in the case of Nemai Ch. Chatterjee has held, inter alia:

“We have considered the DCRB Rule independently and in our opinion the period of service rendered by a Government Servant on a temporary basis must be reckoned for the purpose of qualifying service and consequently payment of pension, provided, that service is followed immediately and without a break by permanent service.”

11. In the instant case also, admittedly, the applicant was appointed on temporary basis in the Maldah Museum in the post of Assistant Curator and appointed on regular basis to the post of Curator of Maldah Museum on and from 06.08.2008. Therefore, there is no break in service of the applicant which has been

referred by the Principal Secretary, Maldah Museum Managing Committee and not been controverted by the department. However, the respondents have rejected the case of the applicant on the ground that since he worked for the period of 9 years 4 months and 25 days and with a shortfall of 7 months and 6 days for the required minimum length of service on regular basis, therefore, he is not to entitle for pensionary benefit. However, as per Rule 22 of D.C.R.B. Rules, if concerned person worked uninterruptedly prior to regularization that period would be taken into account for the purpose of counting of past service / qualifying service for making payment of pension and pensionary benefit. Therefore, judgement passed by the Hon'ble Apex Court as referred above is squarely applicable in the instant case.

12. Accordingly, I quash and set aside the impugned order dated 06.03.2019 and direct the respondent to count the service period rendered on temporary basis from 03.12.1984 to 05.08.2008 as Assistant Curator in addition to the service period from 06.08.2008 to 03.12.2017 for the purpose of pension and pensionary benefit and make payment of the said within a period of two months from the date of receipt of the order. Accordingly, the O.A. is disposed of with the above observation and direction with no order as to cost.

**URMITA DATTA (SEN)
MEMBER (J)**

A.K.P.