

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA-810 of 2023

Dr. Satinath Samanta -- VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order <u>03</u> 02.09.2024	For the Applicant For the State Respondent	: Mr. Apares Sinha, Ld. Advocate. : Mr. G.P. Banerjee, Ld. Advocate.
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The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The prayer in this application is for a direction to the respondent authorities to release his retiral benefits with retrospective effect from the date when Hon'ble High Court passed an order in WPST 803 of 2001. Mr. Sinha, learned counsel prays for 2005 as the date prayed for such benefit. In the first round of litigation, the Tribunal in OA 510 of 2020 had directed the respondent authorities to hear the applicant in person and consider his representation. After such compliance, the respondent, the Director of Homoeopathy passed the reasoned order on 13.10.2023 which is being assailed in this application. The point not being disputed is that the applicant had joined the post of Homoeopathic Medical Officer in terms of a direction of the Hon'ble High Court on 17.05.2010 in WPST 803 of 2001. After serving for 8 years 7 months and 15 days, the applicant superannuated on 31.12.2018. After superannuation, he received his retiral benefits of GPF, Gratuity, Leave Salary and GISS except the pension. The respondent authorities took the decision not to grant him any pensionary benefits for the reason that he had not completed 10 years of qualifying service to be entitled for such pension in terms of memo 536-F(Pen) dated 01.10.2019 issued by the Finance Department. The fact of the applicant not having completed 10 years of qualifying service is also not in dispute. Mr. Sinha argues that had the respondent authorities complied with such a direction of the Hon'ble High Court in 2005 itself, the applicant would have joined earlier and thus completed more than 10 years of qualifying service.

In response to what Mr. Sinha submitted, Mr. Banerjee emphasises on the specific direction of the Hon'ble High Court and submits that such direction was for absorption of the petitioner, against "next available vacancy". According to Mr. Banerjee, such vacancy arose in 2010 and by an order dated 20.04.2010, the

Form No.

Case No. **OA-810 of 2023**

Vs.

The State of West Bengal & Ors.

applicant was appointed to one post of Homoeopathic Medical Officer. Therefore, it was in compliance to the Hon'ble High Court's direction and the applicant had joined the same post on 17.05.2010 without murmuring any protest.

Having heard the submissions of the learned counsels and after examination of the records referred to by the learned counsels, the Tribunal is satisfied that the applicant was appointed against a resultant vacancy for the post of Homoeopathic Medical Officer in compliance of the Hon'ble High Court in WPST 803 of 2001. Having served for around 8 years without any protest and knowingly very well that such service of less than 10 years will not qualify for regular pension, the applicant joined the post and served in such capacity without any protest. Now having superannuated, he attempts to make a claim on the ground that the delay in compliance of the Hon'ble High Court had resulted in his shorter service. The Tribunal does not find any reason that such a delayed appointment was due to the latches on the part of the respondent authorities. The very fact that when appointed he accepted such a post when the vacancy arose without any protest is itself a very strong sign that the applicant had accepted the terms of such an appointment. Thus, this Tribunal concludes that the prayers for direction to the respondent authorities to grant him regular pension has no justification in this application.

Therefore, this application is **disposed of** without passing any order.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM/SS