

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 398 of 2024

Jyotilal Hembram -- VERSUS – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicants : Mrs. S. Mitra,
Ld. Advocates.

For the State Respondents : Mr. G.P. Banerjee,
Mr. S.N. Ray,
Ld. Advocates.

02
11.02.2025

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.

Mrs. Mitra, learned counsel for the applicants files a copy of the representation prayed by the applicants before the Principal Secretary, Department of Irrigation and Waterways dated 17.09.2024. Copy has been served upon the other side. In this representation, the applicant has prayed for condonation of seven months shortfall under Rule 36 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971. Opposing the prayer in the representation, Mr. Banerjee, learned counsel for the State respondents mentions that in terms of a judgment of the Hon'ble Supreme Court in the case of "Buddhadeb Ruidas & Ors. etc. etc. v. State of West Bengal & Ors." in Civil Appeal Nos. 6748-6749 of 2013 (Arising out of SLP (C) Nos. 6177-6178 of 2012) relating to appointment, such prayer is not sustainable. Further, even if such condonation is to be considered under Rule 36, it covers only six months.

The Hon'ble Supreme Court had made it clear in its direction "the appointees cannot claim any seniority with retrospective effect as that might create cavil amongst the appointees in other departments at earlier point of time."

The Rule 36 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 as cited above, gives a discretionary power to the Head of the Department for condonation of such shortfall in service upto six months. Without considering

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the views of the Hon'ble Supreme Court, it is felt that such condonation even of six months may create confusion relating to the seniority of the appointees. If by condonation of six months, the applicants move above in the seniority list of the appointees, it might create unrest among others for being adversely affected. Besides, the discretionary power under Rule 36 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 is restricted only to such cases where the delay in issuing the appointment letter was due to the latches on part of the appointing authority. In this case, however, it does not appear that there was any latches on part of the appointment authority. Therefore, the prayer in this application cannot be considered of having any merit and thus, disposed of without passing any order.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

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