

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 675 of 2019

Kamrul Karim -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant : Mr. D. Banerjee,
Ld. Advocate.
For the State respondent : Mr. S. Ghosh,
Ld. Advocate.

16
22.12.2022

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.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

Learned advocate for the applicant submits that the impugned order of the respondent dated 27.06.2019 does not take into account the fact that he had worked on contractual basis from 05.11.1999 till 16.05.2007. This period of having worked on contractual basis for 7 years 6 months and 12 days are to be counted as part of the service under Rule 22 of WBS (DCRB) Rules, 1971.

Submission is for setting aside the impugned order and granting pension to the applicant.

Mr. Ghosh submits that although the applicant had worked on contractual basis for 05.11.1999 to 16.05.2007, however, his service remunerations as a contractual employee were paid from contingency fund. Since payment was made from contingency fund, Rule 22 is not applicable in this case. Mr. Ghosh further submits as mentioned in the reasoned order, as per WBS (DCRB) Rules, 1971 condonation of only six months shortfall is permissible as a discretion. But in this case the applicant has a shortfall of one year four months and fifteen days.

Mr. Ghosh also refers to a judgement passed by Hon'ble High Court in WPST 91/2019 in the case Sudhansu Karmakar and Ors. Vs. State of West Bengal & Ors. The relevant portion of the judgement is as under –

“Admittedly, the power to relax the period for the purpose of qualifying service is provided in DCRB Rules, 1971 but with an outer cap of

Form No.

Vs.

Case No. OA 675 of 2019

The State of West Bengal & Ors.

six months. The authorities cannot act in contravention to the statutory provisions nor the Writ Court should issue a Mandamus commanding the authorities to act in clear violation of the statutory provisions. Once the power of relaxation is brindled with an outer cap, the authorities are demuded of power to extend such relaxation, who do not come within the purview thereof.”

Learned advocate for the applicant refers to a judgement of Hon’ble High Court reported in 2014(3) CHN (CAL) 608 in the case of Nemaï Ch. Chatterjee Vs. State of West Bengal.

The counsel for the applicant also cites a judgement of Hon’ble High Court of Calcutta reported in WPST No. 31 of 2014 in the case of Pastu Deb Singha Vs. State of West Bengal & Ors. Relevant portion of the judgement is as under :

There is no dispute that the petitioners in each of these writ petitions were initially appointed on a temporary basis. That service was followed, without a break, by permanent service. The petitioners continued to work as such till each of them reached the age of superannuation. However, according to the respondents there is a deficiency of qualifying service in respect of each of the petitioners and, therefore, they are not entitled to pension. The respondents admittedly have not reckoned the service rendered by the petitioners as temporary employees prior to being made permanent in service for the purposes of calculating the qualifying service.

We have, by a separate judgment delivered today in WPST No. 532 of 2010, decided the issues which arise in these petitions. We have held that under the DCRB Rules, the service rendered by an employee on a temporary basis continuously, prior to his being conferred with the permanent status must be taken into account for computing qualifying service for payment of pension. For the reasons stated in the judgment delivered in WPST No. 532 of 2010 these petitions are also allowed.

However, where the petitioners have not rendered qualifying service of

Form No.

Vs.

Case No. **OA 675 of 2019**

The State of West Bengal & Ors.

ten years even after reckoning the period of service rendered by them as temporary employees they would not be entitled to pension as a matter of right. In such cases the Government will apply Rule 36 of the DCRB Rules under which it is vested with the power to condone the deficiency in the qualifying service upto six months. An employee may also apply to the Governor of the State of West Bengal for the relaxation of the Rules under Rule 4 of the DCRB Rules.

However, Mr. Banerjee submits a copy of Memo of the department dated 17.03.1999, in which it is claimed that the salary to the applicant was not paid from the office contingency rather it was paid from a detailed head "Pay & Allowances" under the major head of account "2210-Medical & Public Health (excluding Public Health)-01-Urban Health Services-Allopathy-110-Hospitals & Dispensaries-State Plan (Annual Plan & Ninth Plan)-State Health Systems Development Project-II-Externally Aided Project".

After hearing the submissions from the learned counsels and perusing the records, the Respondent No. 3, Director of Health Services is directed to re-examine and reconsider the matter in the light of above submissions and the judgments/orders referred above within a period of twelve weeks from the date of communication of this order and communicate the same to the applicant within three weeks thereof.

Accordingly, the matter is **disposed of**.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM/SS