

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 863 of 2018.

JOGINDRA YADAV - VERSUS- THE STATE OF WEST BENGAL AND OTHERS.

Serial No. and
Date of order

13
15.6.2023

For the Applicant : Mr. P.B. Subba,
Advocate.

For the State Respondents : Mrs. S. Agarwal,
Advocate.

For the Principal Accountant General (A & E) W.B. : Mr. B. Mitra,
Departmental representative.

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 counsel for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for a direction to the respondent authorities to count his past service and to regularise the extraordinary leave from 01.11.2006 to 26.10.2009 and thereafter to allow the pensionary benefits.

The applicant was appointed as a driver against a temporary post by the Department of Cottage and Small Scale Industries on 8th October, 1998. On 19th July, 1999 pending regularisation of his post, the applicant was allowed the benefits of pay and allowances as admissible to a regular driver Grade-II. In 2003, the payment of salary to the applicant was stopped by the respondent authorities without any notice.

Aggrieved by such suspension of his service and withholding his pay, the applicant approached this Tribunal for a remedy. The Tribunal after hearing the matter directed the respondent authorities to regularise such gap in service and release payment of his arrear salary. On 16th October, 2009 a memorandum No.

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2043MSET(I) was issued which created a post as Special Cadre Driver for the period from July, 2003 to October, 2006 on a super-numeric basis to enable payment of back wages to the applicant. The gap in service from 01.11.2006 to 26.10.2009 was regularised by the respondent by an order dated 07.01.2013. Since this period of absence has been regularised by the respondent, the applicant now prays for a direction to the respondent authorities to clear his pension and retiral benefits from the date of his appointment since 1998.

Mrs. S. Agarwal, learned counsel for the State respondent submits that due to some reasons, the respondent authorities are not able to agree to the proposal of pension to the applicant.

After hearing the submissions of the learned counsels of both sides at this stage, it is important to know the date of birth of the applicant as recorded and accepted in the official records.

Mr Subba has referred to a correspondence No. 4586-MSMET(II)/2S-14/04(III) dated 9th October, 2017 which appears to be a reply from the respondent regarding the matter relating to the pension of the applicant. The relevant portion of which is as under :-

- 1) *“Valid documentary evidence needs be adduced to establish the fact n issue that Sri Jogindra Yadav actually rendered services during the period 01.11.2006 to 26.10.2011.*
- 2) *Pensioner benefit has been given to Jogindra Yadav upto the extent he is entitled to get.*
- 3) *There remains no valid ground to count the past services before formal appointment and extend 8 years MCAS benefit.*
- 4) *The above observations are as per the opinion of the Finance Department”.*

Mr. Subba prays for liberty to file a supplementary affidavit challenging the

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above memorandum.

Prayer is allowed.

Let a supplementary affidavit be filed by and a copy be served upon the respondent authority by the next date and the matter to appear under the heading "For Orders" on 23rd August, 2023.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A).

Skg.

WEST BENGAL ADMINISTRATIVE TRIBUNAL