

**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 :-

Hon'ble Justice Ranjit Kumar Bag,
Judicial Member.

-AND-

Hon'ble Dr. Subesh Kumar Das,
Administrative Member.

J U D G M E N T

-of-

Case No. : O.A. 376 of 2017 :
SADHAN LOHAR –V- STATE OF WEST BENGAL & OTHERS

For the Applicant :-

Mr. Debabrata Karan,
Mr. Debopriyo Karan,
Learned Advocates.

For the State Respondents :-

Mr. G.P. Banerjee,
Learned Advocate.

For the A.G. (A & E), West Bengal :-

Mr. B. Mitra,
Departmental Representative.

Hearing concluded on : March 02, 2020.

Judgment delivered on : July 08, 2020.

J U D G M E N T

The delay of about four months in delivery of judgment is due to intervention of the lockdown of the entire country to prevent outbreak of Corona Virus and consequential non-functioning of the Tribunal during the aforesaid period.

2. The applicant has prayed for direction upon the respondents for granting him pension after treating his service w.e.f. January 1, 2002 in terms of the direction given by this Tribunal on September 26, 2001 in OA No. 876 of 1998 and after setting aside the order dated April 12, 2016 issued by the respondent No. 7, Senior Accounts Officer, Office of the Principal Accountant General (A & E), West Bengal.

3. The applicant joined in the Government service as GDA on January 16, 2009 in pursuance of the order dated December 29, 2008 issued by the Director of Health Services, West Bengal and in terms of the Memorandum dated January 14, 2009 issued by the Chief Medical Officer of Health, Paschim Medinipur. He retired from service on February 28, 2014. The applicant rendered service as Government employee for a period of 5 years 1 month and 16 days and thereby there was short fall of about 4 years 10 months and a few days in qualifying service for grant of pension in terms of the provisions of Rule 67 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short, the DCRB Rules, 1971). The respondent No. 7 communicated to the applicant by letter dated April 12, 2016 (annexure L to the original application) that he is entitled to get only service gratuity and not pension for failure to render the qualifying service of 10 years as Government employee.

4. The contention of the applicant is that he was engaged as Spray Worker by the Deputy Chief Medical Officer of Health, II, Medinipur from the year 1975 till the date of his joining in permanent Group D post of GDA on January 16, 2009. The further contention of the applicant is that he was appointed as Spray Worker on daily wage basis (i.e. no work no pay) by the Deputy Chief Medical Officer of Health, II, Medinipur w.e.f. June 9, 1997. It is also contended by the applicant that he was deprived of the opportunity to join in permanent Government employment w.e.f. January 1, 2002 in terms of the direction of this Tribunal on September 26, 2001 in OA No. 876 of 1998 (B. Chatterjee and Another v. State of West Bengal and Others) due to inaction on the part of the respondents. The main grievance of the

applicant is that the service rendered by him as Seasonal Worker (Spray Worker) for prolonged period of time was not taken into consideration for computation of qualifying service for grant of pension in terms of the provisions of Rule 67 of the DCRB Rules, 1971.

5. With the above factual matrix, Mr. D. Karan, Learned Counsel for the applicant contends that the service rendered by the applicant as Spray Worker or Seasonal Worker must be taken into consideration by the State respondents in computation of qualifying service for grant of pension, as the applicant rendered the service of Seasonal Worker continuously till the date of his appointment in the permanent Group D post of GDA on January 16, 2009. Mr. Karan has relied on the following decisions of the Hon'ble High Court and the Hon'ble Supreme Court of India in support of his contention that the service rendered by the applicant as Spray Worker continuously from 1975 till the date of his appointment in permanent Group D post of GDA on January 16, 2009 must be counted for computation of qualifying service for grant of pension : (i) "Kesar Chand v. State of Punjab and Others" reported in AIR 1988 P & H 265, (ii) "Haradhan Mahato v. State of West Bengal and Others" reported in 2013(3) CLJ (Cal) 520, (iii) "Ananta Lal Mahato v. State of West Bengal and Others" (WPST 379 of 2013, decided on July 23, 2014), (iv) "Subhas Chandra Chakraborty v. State of West Bengal and Others" reported in 2013(1) CHN (CAL) 438, (v) "Nemai Chandra Chatterjee v. State of West Bengal and Others" reported in 2014 (3) CHN (CAL) 608, (vi) "Pastu Deb Singha v. State of West Bengal and Others" reported in 2014 (4) CHN (CAL) 32, (vii) "Ram Naresh Rawat v. Aswini Ray and Others" reported in (2017)3 SCC 436, (viii) "Punjab State Electricity Board and Another v. Narata Singh and Another" reported in (2010) 4 SCC 317 and (ix) "State of Karnataka and Others v. C. Lalitha" reported in (2006) 2 SCC 747.

6. Mr. G.P. Banerjee, Learned Counsel representing the State respondents contends that the applicant has failed to produce any material or evidence to establish that he rendered service as Seasonal Worker or Spray Worker continuously and uninterruptedly from 1975 till the date of his appointment in permanent Group D post of GDA on January 16, 2009. He further contends that the service rendered by the applicant as Seasonal Worker on daily wage basis (i.e. no work no pay) cannot be construed as

temporary service. He also submits that the decisions of the Hon'ble High Court and the Hon'ble Supreme Court of India cited on behalf of the applicant have no relevance in the present case where the applicant has failed to establish that he rendered temporary service continuously and uninterruptedly from the date of his engagement till the date of his absorption in permanent employment and as such the period of service rendered by the applicant as Seasonal Worker or Spray Worker intermittently for a particular period in a calendar year cannot be taken into consideration for computation of qualifying service for grant of pension and thereby the applicant is entitled to get only service gratuity as communicated to him by the respondent No. 7.

7. Having heard Learned Counsel representing both parties and on consideration of the materials on record, we would like to decide whether the applicant rendered service continuously and uninterruptedly as Seasonal Worker with effect from the date of his engagement in the year 1975 till the date of his appointment in the permanent Group D post of GDA on January 16, 2009. No document of engagement of the applicant as Spray Worker is forthcoming before us. The document marked by annexure A to the original application indicates that the Deputy Chief Medical Officer of Health-II, Medinipur has given the particulars of service of the applicant on May 4, 1992 without any official seal and memo number of the office where he was functioning. This document can establish that the applicant was engaged as Spray Worker for a fixed period in one calendar year from 1975 to 1976 and thereafter from 1979 to 1991. Nothing is on record to indicate what is the fixed period of each calendar year when the applicant rendered service as Seasonal Worker from 1975 to 1976 and from 1979 to 1991. On consideration of the photocopy of the documents produced on behalf of the applicant, we find that the applicant rendered service as Seasonal Worker/Spray Worker/Field Worker/Labourer during different spells of a calendar year, which may be enumerated as follows :

(i) the applicant rendered service as Seasonal Spray Worker for (6) six months on payment of consolidated remuneration of Rs.220/- p.m. w.e.f. January 16, 1990;

- (ii) the applicant rendered service as Seasonal Spray Worker for (6) six months on payment of consolidated remuneration of Rs.800/- p.m. during the year 1992-93;
- (iii) the applicant rendered service as Spray Worker for (2) two months on payment of Rs.31.80/- per day w.e.f. April 15, 1993;
- (iv) the applicant rendered service as Labourer on payment of Rs.33.81/- per day w.e.f. April 16, 1994;
- (v) the applicant rendered service as superior Field Worker for (2) two months on payment of consolidated remuneration of Rs.800/- p.m. w.e.f. August 16, 1994;
- (vi) the applicant rendered service as superior Field Worker for (2) two months on payment of consolidated remuneration of Rs.800/- p.m. w.e.f. September 1, 1996;
- (vii) the applicant rendered service as Field Worker for (2 and 1/2) two and half months on payment of consolidated remuneration of Rs.800/- p.m. w.e.f. January 17, 1998;
- (viii) the applicant rendered service as Field Worker on payment of consolidated remuneration of Rs.800/- p.m. w.e.f. September 15, 1999;
- (ix) the applicant rendered service as Seasonal Spray Worker for (1) one month in the month of March, 2000/-;
- (x) the applicant rendered service as Field Worker for (1) one month in September, 2000;
- (xi) the applicant rendered service as Spray Worker for (13) thirteen days in the month of June, 2001;
- (xii) the applicant rendered service for (13) thirteen days as Field Worker in the month of August, 2001;
- (xiii) the applicant rendered service for (1) one month on daily wage basis @74/- per day w.e.f. June 19, 2004;
- (xiv) the applicant rendered service for (2) two months on daily wage basis @74/- per day w.e.f. June 19, 2005 and
- (xv) the applicant rendered service for (2) two months on daily wage basis @84/- per day w.e.f. July 6, 2008.

8. On close scrutiny of the entire period of service rendered by the applicant on daily wage basis and on the basis of consolidated monthly remuneration in different spells of a calendar year, we find no evidence that the applicant was engaged either as Spray Worker or as Labourer or as Field

Worker for about one year from 1977 to 1978, for 12 (twelve) months in 1991, 16 (sixteen) months from 1992 to 1993, 15 (fifteen) months from 1994 to 1995, 10 (ten) months in the year 1996, 12 (twelve) months in the year 1997, 10 (ten) months in the year 1998, 10(ten) months in the year 2000, 10 (ten) months in the year 2001, 12 (twelve) months in the year 2003, 11 (eleven) months in the year 2004, 11 (eleven) months in the year 2005, 12 (twelve) months in each year of 2006 and 2007 and 11 (eleven) months in the year 2008. The natural corollary of our above observation is that the applicant did not render continuous and uninterrupted service from the date of his initial engagement as Spray Worker in the year 1975 till the date of his appointment in permanent Group D post of GDA on January 16, 2009. Accordingly, the contention of the applicant that he rendered service continuously and uninterruptedly from the date of his initial engagement as Spray Worker in the year 1975 till the date of his appointment in permanent Group D post on January 16, 2009 has not been substantiated from the materials on record.

9. Now, we would like to discuss the decisions cited by Mr. Karan, Learned Counsel for the applicant in support of his argument that the temporary service rendered by a Government employee will be counted as qualifying service for grant of pension, if the said temporary service is continuous and uninterrupted and followed by absorption/appointment in permanent post. In “Kesar Chand v. State of Punjab and Others” (supra), the petitioner rendered service on regular basis without any break from August 1, 1951 till the date of his retirement on October 31, 1977, though his initial service from August 1, 1951 to August 15, 1972 was in the work-charged establishment. The petitioner was denied pension in terms of the provisions of Rule 3.17 of Punjab Civil Service Rules, Vol-2, whereby the service rendered by a Government employee in a permanent post can be computed as qualifying service for grant of pension. The full Bench of Punjab and Haryana High Court gave direction for grant of pension in favour of the petitioner by counting of the entire period of service rendered by him from August 1, 1951 to October 31, 1977 including the period of service rendered by him in work-charged establishment by relaxation of the provisions of Punjab Civil Service Rules, Vol-2, as the petitioner rendered service uninterruptedly and without any break from the date of his initial

appointment in the work-charged establishment till his service was brought under regular establishment. The facts of this case of Punjab and Haryana High Court are clearly distinguishable from the facts of the present case where the applicant has failed to establish that he rendered service continuously and uninterruptedly from the date of his initial engagement till the date of his appointment in the permanent Group 'D' post. Therefore, this decision does not help the applicant in establishing his right to get pension.

10. In "Haradhan Mahato v. State of West Bengal and Others" (supra), the petitioner was appointed as Casual Worker under Kangasabati Canal Division No. 1 on July 1, 1968 and discharged the duty of Night Guard till the date of his absorption in the permanent post of Night Guard on April 18, 1996. He retired from service on January 31, 2006. There was short fall of less than 3 (three) months of service as permanent Government employee and thereby pension was denied to the petitioner. Learned Division Bench of the Hon'ble High Court at Calcutta directed the State of West Bengal to grant pension to the petitioner on consideration of his long period of continuous and uninterrupted service as casual worker before his absorption in the permanent post of Night Guard. The facts of this reported case are distinguishable from the facts of the present case where the applicant has failed to establish his continuous and uninterrupted service as Seasonal Worker till the date of his appointment in the permanent Group 'D' post. Accordingly, the ratio of this reported case is not applicable in the facts of the present case.

11. The petitioner of "Pastu Deb Singha v. State of West Bengal" (supra) was although engaged as Seasonal Worker with the Kangsabati Canals Division No. 1, but his service continued uninterruptedly without any break till the date of regularisation of the service in the permanent post. The Hon'ble Division Bench of the High Court at Calcutta observed in paragraph 5 of the judgment that the petitioner was initially appointed on a temporary basis, but the service was followed without any break by permanent service. Accordingly, the service rendered by the petitioner on temporary basis continuously prior to his being conferred with permanent status was taken into consideration for computation of qualifying service for grant of pension. Unfortunately, in the present case, the applicant was not

appointed on temporary basis continuously from the date of initial engagement till the date of appointment in the permanent post on January 16, 2009 and as such the ratio of “Pastu Deb Singha” has no application in the present case.

12. The petitioner of “Nemai Chandra Chatterjee v. State of West Bengal” (supra) was engaged as Seasonal Belders on a scale of pay plus usual admissible allowances and continued in service till the date of absorption in the permanent post. The Hon’ble Division Bench of the High Court at Calcutta observed in paragraph 18 of the judgment that the temporary service rendered by the petitioner as a Government employee was followed without any break by permanent service and as such the temporary service rendered by the petitioner was reckoned along with permanent service for computation of qualifying service for grant of pension. In the case at hand, the applicant did not render continuous and uninterrupted service as Seasonal Worker from the date of initial engagement on daily wage basis till the date of appointment in the permanent post and as such the applicant cannot get the benefit of the ratio of “Nemai Chandra Chatterjee” (supra) as contended by the Learned Counsel for the applicant.

13. In “Ananta Lal Mahato v. State of West Bengal & Others” (supra), the petitioner was appointed on a temporary basis and continued in service without any break till he was made permanent in service on April 18, 1996. Relying on previous judgment of “Nemai Chandra Chatterjee” (supra) and “Pastu Deb Singha” (supra), the Hon’ble Division Bench of the High Court at Calcutta observed that the service rendered by the petitioner as a Government employee on temporary basis continuously prior to acquiring permanent status, must be taken into consideration for computation of qualifying service for grant of pension. We have already observed that in the present case the applicant has failed to establish that he rendered service as Seasonal Worker or Spray Worker continuously and uninterruptedly from the date of his initial engagement till the date of appointment in the permanent post and as such the ratio of “Ananta Lal Mahato” (supra) is not applicable in the facts of the present case.

14. In “Subhas Chandra Chakraborty v. State of West Bengal and Others” (supra), the petitioner was appointed in the post of Primary School Teacher

long after empanelment as a successful candidate, pursuant to the specific direction given by the Hon'ble High Court at Calcutta in a writ petition filed by the petitioner. He served as Primary School Teacher for 9 years, 11 months and 17 days till the date of superannuation. The pension was denied to him due to short fall of 13 days in qualifying service for grant of pension. The deficiency of 13 days in qualifying service for grant of pension was not condoned by Government, in spite of having clear provision in West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981. Accordingly, the Division Bench of the Hon'ble High Court gave direction to the Government of West Bengal for grant of pension in favour of petitioner by condonation of short fall of 13 days in qualifying service for grant of pension. The petitioner of this reported case was not a Government employee and was not governed by the provisions of the DCRB Rules, 1971 by which the applicant of the present case is governed. Moreover, the applicant of the present case was not a primary school teacher. Nor did he render continuous and uninterrupted service as a temporary Government employee before appointment in the permanent post and as such the reported case of "Subhas Chandra Chakraborty" (supra) does not help the applicant to establish his right to get pension.

15. In "Punjab State Electricity Board and Another v. Narata Singh and Another" (supra), the Hon'ble Supreme Court has held that the employee who joined in the service of Punjab State Electricity Board after his retrenchment of the service in the work charged establishment in terms of the policies formulated in the G.O. issued by the State Government and retired from permanent post of Punjab State Electricity Board, is entitled to count his past service in the work charged establishment for computation of qualifying service for grant of pension. This reported case has no relevance in deciding the claim of the applicant who did not render service in a work charged establishment at any material point of time.

16. In "Ram Naresh Rawat v. Aswini Ray and Others" (supra), the petitioners were engaged as daily wagers by the State of Madhya Pradesh on different dates and during different period of time. They were classified as permanent in terms of the provisions of Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 framed under Section 21 (1) of

the Madhya Pradesh Industrial Employment (Standing Orders), Act 1961 on the basis of award given by the Labour Court which was affirmed by the superior Court. The pay of the petitioners was fixed in the minimum of the pay scale and no increment was given to them. The issue for consideration of the Hon'ble Supreme Court was whether the petitioners were entitled to get increment in the pay scale as regular permanent employees. The Hon'ble Supreme Court is of the view that the petitioners are not entitled to get any increment in the pay scale, as service of the petitioners was not regularised in spite of giving them permanent status and as such they are entitled to get only minimum of the pay scale. This reported case has no relevance in deciding the issue involved in the original application.

17. The "State of Karnataka and Others v. C. Lalitha" (supra) relates to unjustified claim of the respondent for appointment to the post of Assistant Commissioner, though she was appointed in the post of Tahasildar in terms of the revised reservation policy. This case has no relevance in deciding the issue involved in the original application.

18. In view of our above findings, we cannot persuade ourselves to give any direction to the respondents for counting the casual service rendered by the applicant on daily wage basis or on the basis of consolidated remuneration for fixed period of time in a calendar year for computation of qualifying service for grant of pension. The applicant is, thus, not entitled get any relief in the original application.

19. Accordingly, the original application is dismissed, but in the circumstances of the case without any cost.

20. The urgent Xerox certified copy of the judgment and order, if applied for, be supplied to the parties on priority basis on compliance of all necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER (A)

(Ranjit Kumar Bag)
MEMBER (J)