

**ORDER SHEET**  
**West Bengal Administrative Tribunal**

Present.-  
The Hon'ble Justice Ranjit Kumar Bag  
&  
The Hon'ble Dr. Subesh Kumar Das

Case No. **OA - 930 of 2017**

*Biman Behari Thakur*

Versus

*The State of West Bengal & Ors.*

Serial No. and  
date of order

Order of the Tribunal  
with signature

Office action with date  
and dated signature of  
parties when necessary.

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03  
20/02/2019

***For the Applicant***

: *Mrs. S. Mitra,  
Ld. Advocate.*

***For the State Respondent :***

*Mr. S. Bhattacharyya,  
Mrs. M. Mallick,  
Depttl. Rrepresentatives.*

***For the A.G., W.B.***

: *Mr. B. Mitra,  
Depttl. Representative.*

*The applicant has prayed for direction upon the respondents for granting him pension after condonation of deficiency in qualifying service for pension.*

*It appears from the materials on record that the applicant worked as Tahasil Mohurrior on commission basis for a period of 4 months in a calendar year during the period from 1978 to 1984. The Tahasil Mohurriors were appointed in Group 'D' post in permanent vacancy phase by phase in terms of the direction given by the Hon'ble High Court. The applicant was, thus, appointed in the post of Night Guard (Group 'D') on the basis of the order dated June 20, 2007 issued by the District Land and Land Reforms Officer, Birbhum. He retired from service on February 29, 2016 and thereby he rendered service as Group 'D' employee for 8 years, 8 months and 10 days. The applicant will have to render 10 years of service as regular employee*

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|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
|                                       | <p><i>in government establishment for getting pension in terms of Rule 67 of West Bengal Services (death-cum-retirement benefit) Rules, 1971 (in short, the DCRB Rules, 1971).</i></p> <p><i>With the above factual matrix, Mrs. Mitra, Learned Counsel for the applicant contends that Medical Fitness Test and report of Police Verification of the applicant were received by the state respondents in the year 2000, but the applicant was not given any appointment in the Group 'D' post. The applicant had to approach the Tribunal by filing OA-645/2004 praying for issuance of appointment letter in favour of the applicant. On March 17, 2005, the Tribunal disposed of OA-645/2004 by directing Director of Land Records and Survey and Joint Land Reforms Commissioner, West Bengal to consider the original application of the applicant as a representation and dispose of the same by passing a reasoned order within a period of 4 months from the date of communication of the said order. Mrs. Mitra has urged this Bench to consider that the appointment letter was issued in favour of the applicant only on June 20, 2007 inspite of the above direction of the Tribunal in OA-645/2004, and thereby the applicant was deprived of rendering 10 years of service in regular establishment for getting pension.</i></p> |                                                                                 |

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|                                       | <p><i>Relying on the Division Bench Judgment of the Hon'ble High Court at Calcutta in "State of West Bengal &amp; Ors. Vs Aparesh Chandra Dutta &amp; Ors." reported in (2016) 4 WBLR (Cal) 574, Mrs. Mitra submits that one Primary School Teacher got the benefit of condonation of deficiency of service for a period of 2 (two) months and 1 (one) day for getting pension, as the State of West Bengal was responsible for not giving appointment to the said Primary School Teacher for a period of almost 8 years after passing of the order by the Hon'ble High Court. However, Mrs. Mitra has not pressed for computation of the period of service rendered by the applicant as Tahasil Mohurrior on the ground that the period of service rendered by Tahasil Mohurrior was not continuous and uninterrupted from 1978 to 1984.</i></p> <p><i>Mr. Bhattacharyya, the Departmental Representative of the state respondents has relied on an unreported decision of the Division Bench of the Hon'ble High Court in "Krishna Dasgupta Vs State of West Bengal &amp; Ors." (W.P.S.T. No. 11 of 2011 disposed of on March 03, 2011) and submitted that the applicant is not entitled to get any benefit of retrospective appointment even though there was default or negligence or mistake on the part of the employer in issuing appointment letter. He further submits that the</i></p> |                                                                                 |

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|                                       | <p><i>procedure for appointment of erstwhile Tahasil Mohurrior in permanent Group 'D' post in regular establishment was a long drawn procedure and the said appointment was done only on availability of vacancy.</i></p> <p><i>Having heard Learned Counsel representing the applicant and the Departmental Representative of the state respondents, we find that there is nothing on record to indicate that the service rendered by the applicant as Tahasil Mohurrior was continuous and uninterrupted prior to his appointment in Group 'D' post in regular establishment on June 20, 2007. Naturally, the applicant is not entitled to get benefit of service rendered by him as Tahasil Mohurrior from 1978 to 1984 as seasonal worker for a period of 4 (four) months in a calendar year. In "State of West Bengal and Ors. Vs Aparesh Chandra Dutta &amp; Ors. (Supra)" we find that Learned Single Judge of the Hon'ble High Court gave direction to the state respondents to appoint the petitioner of the said case as Primary School Teacher by passing an order on March 13, 1991. The petitioner of the said case got appointment as Primary School Teacher after lapse of 8 (eight) years when the contempt application was moved by the petitioner for wilful violation of the order of the Hon'ble High Court.</i></p> |                                                                                 |

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|                                       | <p><i>By considering the above factual aspect, the Division Bench of the Hon'ble High Court directed the authority concerned for granting the benefit of pension to the petitioner of the said case by condoning deficiency of service for a period of 2 (two) months and 1 (one) day. It is pertinent to point out that the Division Bench of the Hon'ble High Court specifically observed in paragraph 25 of the Judgment that the said order passed by the Division Bench of the Hon'ble High Court will not create any precedent. In the present case, the Tribunal did not give any specific direction for issuing appointment letter in favour of the applicant by order dated March 17, 2005 in OA-645/2004. That apart, the present applicant never moved the Tribunal by filing any contempt application for willful violation of the order dated March 17, 2005 passed in OA-645/2004. The applicant is governed by the Rules applicable to the government employee, whereas the Primary School Teacher is governed by separate rules applicable to the teachers of the Primary Schools. Accordingly, the facts of the present case are clearly distinguishable from the facts reported in "State of West Bengal &amp; Ors. Vs Aparesh Chandra Dutta &amp; Ors. (Supra)" and thereby the ratio of the said case will not be applicable in the facts of the present case.</i></p> |                                                                                 |

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| Csm                                   | <p><i>In unreported case of “Krishna Dasgupta Vs State of West Bengal &amp; Ors. (Supra)” we find that the Division Bench of the Hon’ble High Court has clearly laid down that negligence or default or mistake on the part of the employer to issue appointment letter after selection will not give any right to the appointee to claim appointment with retrospective effect and thereby no benefit of service can be given to the applicant before his appointment in Group ‘D’ post on June 20, 2007. Since the deficiency in qualifying service for pension is more than 6 (six) months, we cannot persuade ourselves to invoke the provisions of Rules 36 of DCRB Rules, 1971 for condonation of deficiency in qualifying service for pension. The applicant has not fulfilled the criteria for rendering qualifying service for pension in terms of Rules 67 of the DCRB Rules, 1971 and as such the applicant is not entitled to get pension. The original application is, thus, <b>dismissed.</b></i></p> <p><i>Let a <b>Plain Copy</b> of the order be supplied to both the parties.</i></p> <p><b>S. K. DAS</b><br/><b>MEMBER(A)</b></p> <p><b>R. K. BAG</b><br/><b>MEMBER(J)</b></p> |                                                                                 |