

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das**

Case No. OA- 87 OF 2018

MANTU LAL SASMAL Vs. STATE OF WEST BENGAL & ORS.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;"><u>2</u> 21.06.18</p>	<p>For the Applicant : Mr. G. Dinada Learned Advocate</p> <p>For the Respondent : Mr. G.P. Banerjee Learned Advocate</p> <p>The applicant was appointed in the post of Workshop Instructor (Foundry) in Jalpaiguri Polytechnic Institute on the basis of the order issued by the Director of Technical Education and Training, West Bengal on December 26, 2011. The contention of the applicant is that the applicant actually joined in the service on January 2, 2012. The applicant has prayed for giving effect to his appointment from March 12, 2001 on the ground of inordinate delay on the part of the respondents to issue appointment letter in favour of the applicant.</p> <p>Learned Counsel for the applicant contends that the applicant stood second in the merit list and the candidate who stood first in the merit list had no requisite qualifications for appointment to the post of Workshop Instructor. The applicant was aggrieved for issuance of appointment letter in favour of the candidate</p>	

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	<p>who stood first in the merit list without having requisite qualifications for the post of Workshop Instructor. The applicant initially moved the Tribunal and thereafter moved the Hon'ble High Court at Calcutta by filing WPST No. 342 of 2003 which was disposed of by the Division Bench of the Hon'ble High Court on August 26, 2008. The Hon'ble High Court gave direction to the State respondents to issue appointment letter in favour of the applicant who stood second in the merit list, if the candidate who stood first in the merit list fails to produce certificates of educational qualifications in terms of Clause (II) of the Notification dated January 22, 1987 within a period of one year from the date of receipt of the certified copy of the order. Learned Counsel for the applicant submits that the State respondents did not issue any appointment letter in favour of the applicant in spite of specific direction of the Division Bench of the Hon'ble High Court and, therefore, the applicant had to move contempt application being C.P.A.N. 435 of 2010 in connection with WPST No. 342 of 2003 which was disposed of on September 5, 2017. The Division Bench of the Hon'ble High Court has observed in the order dated September 5, 2017 passed in connection with the contempt application that the issue with regard to</p>	

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	<p>promotion and seniority of the applicant can be agitated before the appropriate forum in accordance with law. The applicant has submitted one representation before the respondent no. 2 on October 28, 2017 praying for seniority and benefit of Career Advancement Scheme, but the said representation has not yet been considered by the concerned respondents.</p> <p>Mr. Banerjee, Learned Counsel representing the State respondents submits that the Division Bench of the Hon'ble High Court has never given any direction for giving benefit of seniority and promotion to the applicant. He further submits that the applicant is not entitled to get any benefit of service during the period for which he was not appointed in the service.</p> <p>On perusal of the prayer of the applicant in the original application, we find that the specific claim of the applicant is to give effect of appointment from March 12, 2001, though he joined in the service on January 2, 2012 on the basis of order issued by the respondent no. 2 on December 26, 2011. The Hon'ble High Court has never given any direction to the respondents to give benefit of service to the applicant for the period for which the</p>	

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	<p>applicant did not serve in the post of Workshop Instructor in Jalpaiguri Polytechnic Institute. In the case of "Krishna Das Gupta V. State of West Bengal & Ors." (WPST 11 of 2011 disposed of on March 3, 2011), the Division Bench of the Hon'ble High Court at Calcutta dealt with a similar case where the petitioner prayed for retrospective effect of appointment to get the benefit of service, as there was inordinate delay on the part of the State respondents in issuing appointment letter. The Division Bench of the Hon'ble High Court has held that the petitioner of the said unreported case has no right to claim appointment with retrospective effect and as such he is not entitled to get any benefit of service for the period for which he was not in the service. By following the said Division Bench Judgment of the Hon'ble High Court at Calcutta, we are of the view that the applicant is not entitled to get retrospective effect of his appointment from March 12, 2001 and consequently the applicant has no right to claim benefit of service for the period for which he was not in the service.</p> <p>Accordingly, the present application is dismissed.</p> <p>Let urgent xerox certified copy of the order, if</p>	

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Rajib	<p>applied for, be supplied to the parties by giving priority on completion of all necessary formalities.</p> <p>(S.K.Das) MEMBER(A)</p> <p>(R.K.Bag) MEMBER (J)</p>	