

30th January, 2025
(D/L No.18)
Ct. No.4
(SKB)

W.P.S.T.240 of 2024

Gita Naskar and others
Versus
The State of West Bengal and others

Mr. Biswaroop Biswas,
Mr. Pradip Kumar Ghosh
....for the petitioners.

Mrs. Sonal Sinha,
Mrs. Sanchayita De
... for the State.

Mr. Suman Basu
... for the respondent no.3.

1. Heard learned counsel for the petitioners and the learned counsel for the respondents.
2. The original writ petitioner was made a permanent employee of the State Government with effect from February, 1997. Prior thereto since 1981 it is not in dispute that he was serving as a temporary Khalasi. There is no denial of the fact that he was temporarily working as a Khalasi from 1981 to 1997 uninterruptedly. There is also no denial that after a lapse of nearly 16 years as a temporary employee, the petitioner has been granted permanency by the order dated 28th February, 1997.

3. The appointment was given to the petitioner with a rider that the upper age limit shall not be applicable in the case of the petitioner. Such condonation appears to have been allowed only for the reason that the petitioner had already served the respondents in a temporary capacity for nearly 16 years. The original writ petitioner on attaining the age of superannuation retired on 31.08.2004.
4. The present writ petitioner, who is the wife of the deceased employee, thus, came to be substituted.
5. It is the claim of the petitioner no.1 that her husband's temporary service should have been taken into consideration for the purposes of qualifying service for grant of pensionary benefits under the West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971 (in short 'D.C.R.B. Rules'). The claim of the petitioner was not considered by the authorities which brought him to the State Administrative Tribunal (in short 'Tribunal').
6. O.A. No.64 of 2018 filed by the petitioner's husband was rejected which brought the petitioners to this court invoking Article 226 of the Constitution of India by way of the present proceedings.

7. The learned counsel for the petitioners does not dispute that from the date of permanency till the date of superannuation the petitioner no.1's husband had 7 years 4 months of regular service. It is under such circumstance that the learned counsel for the petitioner has placed reliance on the provisions contained in Rules 17, 18 and 22 of the D.C.R.B. Rules.
8. After placing the said rules/provisions, he has drawn the attention of this court towards a judgment of a co-ordinate Bench of this court in the case of ***Nemai Ch. Chatterjee Vs. State of West Bengal*** reported in ***(2014)3 CHN(CAL) 608***. Referring to the said judgment, it is submitted that considering the effect of the above noted three provisions of the D.C.R.B. Rules, the co-ordinate Bench has held as follows:

“18. The submission on behalf of the State that the judgment of the Division Bench in ***Haradhan Mahato Vs. State of West Bengal and others [WPST 184 of 2010]*** is *per incuriam* and *sub silentio* is unacceptable. There can be no dispute about the proposition of law expounded in the judgments in *Faridabad CT Scan Centre (supra)* and *State of Bihar Vs. Upendra Narayan Singh and others (supra)* that a benefit given to one set of persons wrongly, cannot be extended to others by invoking Article 14 of the Constitution of India. However these judgments are not relevant in the facts of this case. We have considered the DCRB Rule independently and in our opinion the period of service rendered by a Government Servant on a temporary basis must be reckoned for the purpose of qualifying service and consequently payment of pension, provided, that service is followed immediately and without a break by permanent service.”

9. The said judgment of the co-ordinate Bench was assailed by the State before the Apex Court in SLP Civil No.2465 of 2014. The SLP against the said judgment was dismissed on 30.04.2014. It is, thus, submitted that the facts of the present case would invite the benefit of the decision of the co-ordinate Bench in the case of *Nemai Ch. Chatterjee(supra)*.
10. He submits that the facts are squarely covering the facts of the present case. Here also the permanent service of seven years four months is preceded by an interrupted service of nearly 16 years and the same has culminated into permanency. Therefore, the denial of counting of the past temporary services for the purposes of pensionary benefits under the D.C.R.B. Rules is unsustainable.
11. It is his submission that the Tribunal has not even recorded the relevant provisions which was cited by the petitioner and, therefore, the judgment of the Tribunal is unsustainable.
12. Learned counsel for the State, on the other hand, submits that Rule 36 of the D.C.R.B. Rules permits a condonation only if there is a shortfall of six months and that also in accordance with the terms and conditions contained therein.

13. Upon consideration of the rival submissions, we are inclined to accept the submissions of the learned counsel for the petitioner.

14. In the present case, the petitioner is not seeking condonation of a shortfall in his service for the purposes of grant of pensionary benefits. The present case is not governed by Rule 36 of the D.C.R.B. Rules. In fact, in the present case, the petitioner no.1 seeks counting of her husband's past temporary services since 1981 in terms of the decision passed by the co-ordinate Bench in the case of ***Nemai Ch. Chatterjee(supra)***. Since the said judgment has interpreted the effect of a harmonious construction of the three provisions contained in Rules 17, 18 and 22, we considered it apposite to reproduce these three provisions, which reads as follows:-

“17. Qualifying service – Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the office to which he is first appointed either substantively or in an officiating or temporary (emphasis ours) capacity. Provided that in the case of officers in class I, II and III services, service rendered before attaining the age of 18 years, attaining the age 16 years, shall not count, except for compensation gratuity.

18. Conditions for pension — Service of an officer does not qualify for pension unless it conforms to the following condition to the following conditions, namely :

(a) the service must be under Government;

(b) the employment must be

- i) Substantive and permanent or
- ii) of permanent status, or quasi-permanent,

(c) the service must be paid by Government,

22. (1) Any temporary or officiating service under Government followed without interruption by confirmation or by declaration as quasi-permanent or permanent in status in the same or another post shall however count in full as qualifying service except that shall however count in full as qualifying service except that—

(a) the period of temporary or officiating service in and establishment where contributory provident fund benefits are allowed shall not count unless the Government contribution including interest is refunded in full to Government;

*(b) the period of service paid from contingencies shall not count.

(2) Past service whether permanent or temporary rendered by a Government servant of the undivided province of Bengal who at the time of Partition opted finally for service in Pakistan but returned to West Bengal and was absorbed in the State Government not later than 31st December 1951 and subsequently made permanent, will count towards pension provided the service was otherwise qualifying. The period of service rendered under the Government of East Pakistan after Partition and the period during which no duty was performed will neither count towards pension nor constitute a break for a determining the total length of service.”

15. In the present case the petitioner is claiming the counting of the past temporary service rendered since 1981 to be counted as qualifying service under Rule 17 of the D.C.R.B. Rules. The petitioner no.1's husband was in continuous temporary service since 1981. It is also not in dispute that after serving in temporary

service for 16 years, as such her husband was made a permanent State Government employee with effect from February 1997. Thereafter, he has served the State Government for 7 years 4 months regularly.

16. The petitioner, therefore, is entitled to count such long uninterrupted temporary service, which culminated into permanent Government employment as qualifying service for the purpose of grant of benefit under the D.C.R.B. Rules. Such conclusion is supported by decision of the Co-ordinate Bench in the case of ***Nemain Ch. Chatterjee (Supra)***.

17. We find that the petitioners' case is squarely covered by the decision of the co-ordinate Bench of this court. We, therefore, find the petitioner's husband is entitled to counting of the past services rendered in a temporary capacity since 1981 by her husband for the purposes of pensionary benefits under the D.C.R.B. Rules.

18. We, therefore, direct that the uninterrupted temporary service from 1981 till February 1997 when the petitioner's husband was made a permanent employee be counted as pensionable service and the arrears of pension be paid to the

present petitioner no.1 from 31.08.2004, i.e. his date of attaining superannuation.

19. For the period thereafter, till the date of demise of the petitioner's husband (27.10.2020), we further direct the petitioner be granted the due and admissible family pension till date, and to be paid month to month, hereafter.
20. The learned counsel for the petitioners submits that there are judgments galore based on which the past temporary service has been repeatedly directed by the court to be counted for the purposes of pensionary benefits under the D.C.R.B. Rules in view of the provisions contained in Rules 17, 18 and 22.
21. In spite of such judgments being repeatedly rendered and in spite of specific claim being made by the petitioner no.1's husband during his lifetime for such benefit, the husband and thereafter the wife both have been left in destitute and the period by now is nearly 20 years. We find the situation to be appalling and we are of the opinion to grant penal interest in favour of the petitioner. However, we refrain from granting any excessive interest and confine the same to 6% per annum on the amounts due and payable as above.

22. The same shall be calculated with effect from the date withheld till the date of payment. The payments be made along with the calculation chart showing details of such calculation.
23. The entire exercise is required to be completed within a period of three months from date of receipt/production of a copy of this order.
24. The writ petition is, thus, allowed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)