

29.07.2025
Item No.01
Court No.11
KCP

**MAT 665 of 2025
with
IA No.CAN 1 of 2025
with
IA No.CAN 2 of 2025**

**The State of West Bengal & Ors.
- Versus -
Bansi Badan Kole & Anr.**

Mr. Biswabrata Basu Mallick, Ld. AGP.
Ms. Parna Roy Choudhury.
...for the Appellants

Mr. (Dr.) Debabrata Karan,
Ms. Sabita Khutia (Bhunya),
Ms. Ria Bhunya.
....for the Respondent No.1/
Writ Petitioner

The present appeal has been preferred by the State and its functionaries challenging an order dated 5th August, 2024 passed by the learned Judge in the writ petition being WPA 10763 of 2023.

As we have invited the learned advocates to advance their arguments on the merits of the matter, the delay in preferring in the present appeal is condoned and the application for condonation of delay being CAN 1 of 2025 is disposed of.

Records reveal that the writ petition, being WPA 10763 of 2023 was preferred by the writ petitioner/respondent no.1 herein, namely, Bansi Badan Kole (in short, Bansi) challenging *inter alia* an

order dated 18th April, 2012 passed by the Principal Secretary, School Education Department, Government of West Bengal refusing to condone the deficiency in qualifying service of Bansi and denying him pension on a purported finding that he had served less than 10 years, which debars him from such benefit under the West Bengal Recognised Non – Government Educational Institutions Employees (Death – cum – Retirement Benefit) Scheme (hereinafter referred to as the Pension Scheme).

Mr. Basu Mallick, learned Additional Government Pleader appearing for the appellants submits that the shortage of qualifying service of the Bansi is of more than three years and the learned Judge ought not to have taken into consideration the past unapproved service for the purpose of condonation of deficiency of qualifying service.

He argues that the learned Judge ought to have appreciated that by accepting the approval of service with effect from 8th June, 2005 and having continued in service till the date of his superannuation on 6th October, 2011, Bansi had waived his right to claim condonation of deficiency in service and that too after cessation of the employer – employee relationship.

Drawing our attention to ground no. VII in the memorandum of appeal, Mr. Basu Mallick contends

that the appellant no.4 is not the competent authority to condone the deficiency in qualifying service and as such the *'the appellants are not in a position to comply with the order as passed by the Ld. Single Judge'*.

Dr. Karan, learned advocate appearing for Banshi denies and disputes the contention of Mr. Basu Mallick and submits that Banshi's name was sponsored by the Employment Exchange in the year of 1986-87 against the vacancies for the post of Assistant Teacher notified by this Council in the year of 1986 and due to series of Court cases he could not be appointed and ultimately pursuant to the order passed by the Hon'ble Court, a separate panel was prepared and approved. For such delayed approval and for the laches on the part of the appellants, Banshi cannot be made to suffer.

He contends that pension is a retirement benefit partaking of the character of regular payment to a person in consideration of the past service rendered by him and is claimable as a matter of right and such right is in the nature of a property in the hands of the employee which cannot be denied only on the ground of alleged delay. The benefits of the Pension Scheme cannot be scuttled by limiting the period of condonation in as much as such restriction would lead to discrimination.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, Banshi's approval was withheld due to a series of litigation and was ultimately granted in the year 2005, when in respect of others it was issued in the year 1993. Though such delay is not attributable to Banshi, he had suffered the injury for having been deprived of approval for more than 10 years and that as such the State cannot set up any defensive doctrine of estoppel. The beneficent scheme would be thrown out of gear in the event, a restrictive meaning is applied and benefits are not extended to Banshi. Delay on the part of Banshi in approaching the Court, as urged by the appellants, was rightly discounted placing reliance upon the judgment delivered in the case of *Union of India and others versus Tarsem Singh*, reported in (2008) 8 SCC 648 in appreciation of the continuing wrong creating a continuous source of injury and moreso when the grant of pension upon condonation of deficiency in service would not in any manner affect any settled rights of third parties.

In view thereof, we do not find any reason to interfere with the direction of the learned Judge to grant notional benefit to Banshi treating him to be in service for the qualifying period of ten years and to

proceed processing with the pension file and to ensure that he receives his pension at the earliest.

However, as under the Pension Scheme, the Principal Secretary, School Education Department, Government of West Bengal is the authority competent to condone the deficiency of service, we direct the said appellant to take steps towards condonation of such deficiency of service. The said appellant along with the other appellants, including the appellant no.4, who is the pension sanctioning authority, shall also take all follow up steps towards disbursement of all benefits, as directed by the learned Judge. The time limit which was fixed by the learned Judge is extended for a period of four months from the date of communication of this order.

With the aforesaid modification, the appeal and the connected stay application are disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)