September 28, 2026
Sl. No.2
Court No.11
s.biswas

WPST 159 of 2026

Lalmohan Mondal
vs.
The State of West Bengal and others

Mr. Malay Bhattacharyya
Mr. Subhrajyoti Ghosh
... for the petitioner

Mr. D. N. Ray, GP
Mr. Pulakesh Bajpayee
Mr. Guddu Sigh
... for the State

Records would reveal that the writ petitioner, namely, Lalmohan Mondal (in short, Lalmohan) initially approached the learned Tribunal by filing an original application (in short, OA) being OA 240 of 2023 praying for condonation of the shortfall of service to qualify him for pension under Rule 36 of the West Bengal (Death-cum-Retirement Benefit) Rules, 1971 (in short, DCRB Rules). The said OA was disposed of by an order dated 19th November, 2024 granting liberty to Lalmohan to submit a representation and directing the Principal Secretary, Department of Irrigation and Waterways to consider Lalmohan's claim. Pursuant to such direction, the Additional Chief Secretary, Irrigation and Waterways Department passed an order on 8th March, 2025 observing *inter alia* that '*the past service rendered by Sri Lal Mohan Mondal, the Applicant herein, as muster roll worker under Purulia Construction Division (Irrigation), Irrigation & Waterways Directorate before his absorption under regular*

establishment in the post of Khalasi which has a reference to Irrigation & Waterways Departments' No.1298-IE dt. 14.08.2009 may be considered under rule 22(1) of the West Bengal Service (Death-Cum-Retirement Benefit) Rules, 1971 to extend him the pensionary benefit of minimum pension subject to concurrence of Finance Department, Govt. of West Bengal'. Challenging the said order, Lalmohan preferred OA 262 of 2025. During the pendency of the said OA, the learned Tribunal stopped functioning and as Lalmohan was rendered remediless, he was constrained to approach this Court by filing the writ petition being WPST 159 of 2026.

Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that the Additional Chief Secretary even after observing that the State Cabinet has approved the regularization of 167 of casual/muster roll workers and that Lalmohan's service was also approved as he was placed at serial no.142 of the said list, directed that the past service rendered by Lalmohan as muster roll worker may be considered under Rule 22(1) of the DCRB Rules for extending him the pensionary benefit of minimum pension subject to concurrence of Finance Department, Government of West Bengal. Due to such incorporation of the words *'may be considered'*, no follow up steps were taken and Lalmohan's claim was kept in abeyance.

He contends that Lalmohan served in regular establishment under Irrigation and Waterways Directorate from 27th October, 2009 to 30th June, 2019, *i.e.,* he worked

for 9 years 8 months and 3 days. He had a shortfall of 3 months 27 days in qualifying service to be entitled to get pensionary benefits but such condonation was illegally denied on a purported plea that the shortfall in qualifying service may not be condoned under Rule 36 of the DCRB Rules without any reason. The issue as regards condonation of such shortfall of qualifying service of an employee upon taking into consideration the temporary service rendered by the said employee prior to permanent service is no longer *res integra* and the same has already been decided in the cases of *Nemai Ch. Chatterjee & Ors. vs. State of West Bengal & Ors. (WPST 532 of 2010)* and *Sri Paran Chandra Chatterjee vs. State of West Bengal & Ors. (WPST 127 of 2016)*.

Placing reliance upon the averments made in the affidavit-in-opposition affirmed in the present petition, Mr. Bajpayee, learned advocate appearing for the State respondents, argues that the Lalmohan's engagement as muster roll worker was not an appointment against a permanent vacancy. His engagement was on requirement basis and was limited to a maximum of 20 days in a month and 239 days in a year. Such non-continuous service rendered by the petitioner cannot be taken into consideration of condonation of the deficiency in qualifying service.

Answering our query, Mr. Bajpayee submits that after the order dated 8th March, 2025 was passed by the Additional Chief Secretary, a decision was taken by the

Finance Department that the service rendered by Lalmohan cannot be considered favourably in terms of Rule 22(1) of the DCRB Rules.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

We have perused the averments made in the OA wherein the specific contention of Lalmohan was that he had worked in the regular establishment for a period of 9 years 8 months 3 days and in the qualifying service there is a shortfall of 3 months 27 days and that such deficiency be condoned taking into consideration the service rendered by him prior to permanent engagement. Indisputably, Lalmohan rendered service as a muster roll worker from the year 1991 to 2009. He was absorbed in regular establishment on 27th October, 2009. He retired on 30th June, 2019. Rule 36 of the DCRB Rules itself provides that Government may condone a deficiency of 6 months in the qualifying service of a Government servant. Rule 22(1) of the DCRB Rules also provides that any temporary officiating service rendered as quasi-permanent shall also count in full as qualifying service. The stance of the respondents in the present writ petition that Lalmohan's engagement was limited to a maximum of 20 days in a month and 239 days in a year does not feature in the order dated 8th March, 2025 passed by the Additional Chief Secretary.

The issue that such service rendered as a temporary muster roll worker can be taken into consideration for condonation of deficiency in qualifying service is no longer *res integra* in view of the judgment delivered by a co-ordinate Bench of this Court in the case of *Nemai Ch. Chatterjee* (*supra*). The Special Leave Petition preferred against the judgment delivered in the said writ petition was also dismissed and the directions contained in the judgment delivered in the case of *Nemai Ch. Chatterjee (supra)* have also been complied with by the authorities. Such fact would be explicit from the order dated 8th March, 2025 passed by the Additional Chief Secretary itself but still Lalmohan's claim has been kept in abeyance in a most illegal and arbitrary manner.

In the said conspectus, the respondents are directed to condone the deficiency of 3 months and 27 days in qualifying service and disburse the pensionary benefits in favour of Lalmohan along with all arrears of pension within a period of 8 weeks from the date of communication of this order.

The order dated 8th March, 2025 passed by the Additional Chief Secretary, Irrigation and Waterways Department is modified to the above effect and the OA being OA 262/2025 as well as the writ petition being WPST 159 of 2026 are, accordingly, disposed of.

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

The Office is directed to intimate this order to the Registry of the learned Tribunal to record such disposal of the OA.

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

(Partha Pratim Roy, J.) **(Tapabrata Chakraborty, J.)**