

**Jaya Bhattacharya**

**v.**

**The State of West Bengal & Ors.**

(Civil Appeal No(s). 3254-3256 of 2025)

25 February 2025

**[B.R. Gavai and Prashant Kumar Mishra,\* JJ.]**

### **Issue for Consideration**

Matter pertains to the entitlement of the appellant to pensionary benefits, when her unauthorised absence for twenty years was treated as extraordinary leave and her service was regularised.

### **Headnotes<sup>†</sup>**

**Service law – West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971 – rr.28A, 175, 176(4) – Pensionary benefits – Entitlement, when unauthorised absence of leave treated as extraordinary leave – Appellant-government employee, remained absent from duty for 107 days and thereafter from 1987 to 2007 – Her allegations that though she joined the office and signed the attendance register, she was not allowed to perform her duties and was not paid salary from May, 1987 onwards – Series of litigations – In 2011, appellant’s unauthorised absence from 1987 to 2007 treated as extraordinary leave and service regularised, and was allowed to join back however, not entitled for leave salary during the period of absence – Application for grant of pension and other retiral benefits by the appellant – Tribunal held that the order refusing pension justified – Writ petition thereagainst dismissed by the High Court for want of prosecution – Review application and restoration petition also dismissed – Challenge to:**

**Held:** Denial of pensionary benefits to an employee must emanate from any rule enabling the government for such denial – When the services have been regularized by treating the same as extraordinary leave the same cannot be treated as unauthorised

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leave for denying the pensionary benefits – Thus, having once regularized her service during the period of absence by granting extraordinary leave, it cannot be held that the said period can be treated as break in service – Furthermore, despite tribunal's order directing the Collector to cause a departmental inquiry in respect of the appellant's allegations, no such inquiry was ever conducted by the respondents/authorities – Appellant condemned unheard without subjecting her to any departmental inquiry – Respondents' failure to conduct an inquiry as per tribunal's order cannot shift the burden on appellant to prove that she was prevented from working – In view thereof, the appellant entitled for pension – However, not entitled for arrears of pension. [Paras 11, 12]

### List of Acts

West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971.

### List of Keywords

Pension; Unauthorised leave; Extraordinary leave; Departmental proceeding; Denial of pensionary benefits; Break in service; Review application; Restoration petition; Unauthorised absence of leave treated as extraordinary leave; Signing of the attendance register; Period of absence; Grant of pension and other retiral benefits; Departmental inquiry; Unauthorizedly absence; Arrears of pension.

### Case Arising From

CIVILAPPELLATE JURISDICTION: Civil Appeal No(s). 3254-3256 of 2025

From the Judgment and Order dated 13.07.2023, 06.09.2023 and 21.12.2023 of the High Court at Calcutta in WPST No. 234 of 2015, CAN No. 1 of 2023 and RVW No. 275 of 2023 respectively

### Appearances for Parties

*Advs. for the Appellant:*

Rahul Arya, Madhav Bhatia, Rohit Amit Sthalekar.

*Advs. for the Respondents:*

Ms. Mantika Haryani, Ms. Astha Sharma, Bhanu Mishra.

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Leave granted.

2. These appeals arise from the judgment and orders dated 13.07.2023 passed in WPST No. 234 of 2015, 06.09.2023 in CAN No. 1 of 2023 in WPST No. 234 of 2015 and 21.12.2023 in RVW No. 275 of 2023 in CAN No. 1 of 2023 in WPST No. 234 of 2015, whereby the High Court has dismissed the writ petition as well as Review Application on account of non-prosecution and the application for recalling the order dated 06.09.2023 met the same fate as the advocate remained unable to assist the Court on merits.
3. Although, the writ petition was not adjudicated on merits and the prayer in these civil appeals is for restoration of writ petition, however, considering long pendency of the *lis* for about 25 years, we deem it appropriate to decide the issue on merits.

**Factual matrix:**

4. On 20.03.1986, the appellant was appointed and joined as L.D. Assistant in the Office of Block Development Officer, Jhargram. While she was posted in the Office of Sub-divisional Officer, Jhargram (Respondent No. 3), she remained absent from duty for 107 days and thereafter again from 29.06.1987 to 12.07.2007. She submitted a complaint on 17.02.1987 that she was restrained from signing the attendance register. However, on 15.06.1987 the respondent no. 3 issued a show cause notice to the appellant as to why disciplinary proceedings should not be initiated against her for her unauthorized absence. The appellant submitted her reply and also wrote to the Secretary, Board of Revenue complaining about denial of joining. She preferred writ petition, which was later transferred to the State Administrative Tribunal, West Bengal and registered as T.A. No. 1843 of 1997. The Tribunal disposed of the matter on 24.11.2000 closing the proceedings on the ground that since no departmental proceedings have been initiated, there is nothing to be adjudicated. This order of the Tribunal was challenged before the High Court in

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WPCT No. 270 of 2001 in which the Tribunal's order was set aside, remitting the matter back to the Tribunal.

5. On remand, the Tribunal passed an order on 01.12.2003 directing the Collector, Midnapur (West) to cause a departmental proceeding in respect of the allegations that though she joined the office and signed the attendance register she was not allowed to perform her duties and that she was not paid salary for the month of May, 1987 onwards. It was further directed that she should be given an opportunity of hearing and appropriate order be passed in respect of the payment of salary of the appellant and in respect of allowing her to discharge her duties, within a period of four months.
6. The appellant challenged the second order of the Tribunal in Writ Petition No. 278 of 2004 which was disposed of directing the respondents/authorities to allow the appellant to resume her duties forthwith preferably within 48 hours from the date of communication and she must discharge her duties, if resumed, and if any salary remaining legitimately due and payable, the same shall be paid in terms of the order of the Tribunal. However, the respondents are not precluded from taking lawful action against the appellant, as may be advised.
7. On 19.05.2011, the appellant's unauthorized absence from 29.06.1987 to 12.07.2007 has been treated as extraordinary leave and service has been regularized as per Rule 175 and Rule 176 (4) of the West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971 which provides that a government employee on extraordinary leave is not entitled to any leave salary. Basing on this, the appellant was informed by respondent no. 3 on 07.06.2011 that you have been allowed to join back on 13.07.2007 and your pay has been refixed. However, she is not entitled for leave salary etc. during the period of absence.
8. The appellant again preferred O.A. No. 1347 of 2012 before the Tribunal for grant of pension and other retiral benefits. The main issue before the Tribunal was whether the appellant fulfilled the requisite criteria to be entitled to pension in terms of the relevant rules for the purpose. The Tribunal concluded that the extraordinary leave granted to her being not on any of the grounds listed under Rule 28A of the West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971, the period of extraordinary leave allowed to her cannot be considered as qualifying service to be entitled to pension/family

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pension as stipulated in G.O. NO. 201-F (Pen.) dated 25.02.2009, hence the order refusing pension is fully justified.

9. Challenging this order of the Tribunal, the appellant preferred writ petition which was dismissed for want of prosecution and subsequently her review application and restoration petition have also been dismissed.
10. We have heard learned counsel for the parties and perused the record.
11. What is discernible from the record is that despite Tribunal's order dated 01.12.2003 directing the Collector to cause a departmental inquiry in respect of the appellant's allegations to the effect that though she joined the office and signed the attendance register she was not allowed to perform her duties and was not paid salary from May, 1987 onwards, no such inquiry was ever conducted by the respondents/authorities. Even though the order passed by the respondents/authorities on 19.05.2011 that her unauthorized absence is treated as extraordinary leave and her service is regularized was not challenged subsequently, the fact remains that the appellant has been condemned unheard without subjecting her to any departmental inquiry despite Tribunal's order. Any observation by the Tribunal or the High Court in subsequent proceedings that the appellant failed to demonstrate that she was prevented from performing her duties would not enure to the benefit of the respondents for the simple reason that the said fact could have been established either for or against the appellant only in a duly constituted departmental inquiry. The respondents' failure to conduct an inquiry as per Tribunal's order cannot shift the burden on the appellant to prove that she was prevented from working. Denial of pensionary benefits to an employee must emanate from any rule enabling the government for such denial. When the services have been regularized by treating the same as extraordinary leave the same cannot be treated as unauthorised leave for denying the pensionary benefits. The respondents could have denied the pension to the appellant by proving that she was unauthorizedly absent for the subject period and not by refusing to hold an inquiry against her.
12. In our considered view, having once regularized her service during the period of absence by granting extraordinary leave, it cannot be held that the said period can be treated as break in service. In the peculiar facts and circumstances of this case, we are of the

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considered view that the appellant would be entitled for pension. We, accordingly, direct the respondents/authorities to finalise the appellant's pension within a period of three months. However, the appellant shall not be entitled for any arrears.

13. The Civil Appeals are disposed of in the above terms.

*Result of the case:* Appeals disposed of.

*<sup>†</sup>Headnotes prepared by:* Nidhi Jain