

21.12.2020

pan / 53
Court No.25
Video Conference

W.P.A. No. 8077 of 2020
Sri Lakshmi Kanta Ghosh
– Versus –
The State of West Bengal & Others

Mr. Apurba Ghosh,

Ms. Esha Banerjee

... for the petitioner.

Mr. Supriyo Chattopadhyay,

Mr. Suman Dey

... for the State respondents.

Ms. Moushumi Bhowal

... for the respondent no.4.

The present writ petition has been preferred challenging *inter alia* the inaction on the part of the respondents to disburse the pensionary benefits. Leave is granted to the learned advocate-on-record of the petitioner to amend the cause title.

Mr. Ghosh, learned advocate appearing for the petitioner submits that while the petitioner was working in the post of an Assistant Teacher in Khairullachak Netaji Bidyamandir (H.S.) [in short, the said school], he was falsely implicated in a criminal case. He was arrested in connection with the same. Subsequently, by an order dated 19th March, 2012, he was enlarged on bail. In the midst thereof, a suspension order was issued against the petitioner on 15th February, 2012 by the school authorities. After the petitioner was

enlarged on bail, the school authorities withdrew the order of suspension and allowed him to join his duties on and from 22nd March, 2012 and he rendered his services till his retirement. The allegations levelled against the petitioner in the criminal proceeding were not related to his work or performance of duty as an Assistant Teacher in the said school and as such, no disciplinary proceeding was initiated against him. Prior to his retirement on 30th November, 2019, the petitioner uploaded the necessary documents *online* towards disbursement of his pensionary benefit. In the said documents, as demanded by the school authorities, he had to answer the clause "*Whether any Court Case regarding pay and services is pending/disposed off with Hon'ble High Court or any other Authority?*" (in short, the said clause) in the affirmative. The said application was, however, not processed. As the allegations in the criminal proceeding had no nexus with his services, he resubmitted the pension papers *online* by answering the said clause as "*No*" on 10th January, 2020. The respondent no.4 thereafter issued a letter dated 5th March, 2020 requesting the petitioner to submit clearance certificate from the concerned court in which the criminal case is pending.

He submits that upon investigation in the criminal proceeding, the police authorities submitted a charge-sheet in which the petitioner's name appeared under column 13 [Particulars of accused persons not charge-sheeted] at serial no.16. In support of such contention, he has drawn the attention of this Court to the documents annexed at pages 20-36 and 54 to the writ petition.

He argues that as the allegations in the criminal proceedings have no nexus with the services, the authorities cannot withhold his pension and gratuity. In support of such contention he has placed reliance upon the judgments delivered in the case of *Anadi Prasad Mahato Vs. State of West Bengal & Others*, reported in *2014(2) CHN (Cal) 103*; in the case of *Comptroller and Auditor General of India & Ors. Vs. Ram Debabrata Ghosh & Anr.*, reported in *2013(2)CLJ (Cal)304* and an unreported judgment delivered in the case of *Sk. Jamaluddin Vs. The State of West Bengal & Others* [W.P. 5168(W) of 2018].

Ms. Bhowal, learned advocate appearing for the school authorities submits that a criminal proceeding is pending against the petitioner and as such, the letter dated 5th March, 2020 was issued. A further letter was issued by the

respondent no.4 to the respondent no.2 on 6th March, 2020 intimating that a criminal case is pending against the petitioner. Initially the petitioner submitted his *e-pension* application admitting that a criminal proceeding is pending against him. Subsequently, he has resubmitted such papers declaring that no such proceeding is pending against him. In view of such contrary statements, the school authorities are not being able to submit the remaining pension papers *online*.

Drawing the attention of this Court to clause 19(5) of Chapter V of the pension scheme, Mr. Chattopadhyay, learned advocate appearing for the State respondents submits that as a judicial proceeding is pending against the petitioner, he is not entitled to full pension. In support of such contention he has placed reliance on an unreported order passed in *W.P. 22491(W) of 2009* [*Shyamal Kumar Saha Vs. The State of West Bengal & Ors.*]. The objections pertaining to the petitioner's pension papers, as raised on behalf of the respondent no.5, were forwarded by the respondent no.2 to the respondent no.4 *vide* memo dated 4th March, 2020. Let a copy of the said memo, as produced, be kept on record.

The issue which arises for consideration is as to whether in the facts and circumstances of this case, full pension and gratuity can be withheld due to pendency of the judicial proceeding.

A composite reading of the provisions of the pension scheme would reveal that pension is sanctioned subject to two conditions – one being satisfactory service and the other being a particular tenure of service which can be treated as qualifying service.

Indisputably, in the present case no disciplinary proceeding was initiated against the petitioner during his service tenure. An order of suspension was issued since he was initially arrested in connection with a criminal proceeding. However, such order of suspension was withdrawn after the petitioner was enlarged on bail.

Records reveal that in connection with the criminal proceeding a charge-sheet was submitted under Sections 341/323/326/364/302/201/120B/34 of the Indian Penal Code. In the said charge-sheet the petitioner's name appeared under column 13 [Particulars of accused persons not charge-sheeted] at serial no.16. The offences alleged are not against the person or property of the petitioner's employer. The said offences have no connection with the employment of the petitioner.

In the said criminal proceeding, the petitioner has not been charge-sheeted and the offences alleged in the same have no nexus with the duties discharged by the petitioner in normal course of his employment. The clause in the pension papers is a query as to whether there is any case regarding pay and services against the petitioner. There is no such case.

The judicial proceedings referred to in clause 19 (5) of the pension scheme would mean a judicial proceeding in relation to discharge of the duties as an employee. There is no allegation of pecuniary loss of the respondents arising out of service of the petitioner.

In similar facts and circumstances, two different coordinate Benches of this Court had also observed that due to mere pendency of a criminal proceeding involving offences which have no nexus with the services of the concerned employees, the authorities cannot withhold full pension and gratuity. The said judgments are squarely applicable to the facts of this case. The judgment upon which reliance has been placed by Mr. Chattopadhyay is, however, distinguishable on facts.

In view thereof, the respondents cannot withhold disbursement of the full pensionary benefits due to mere pendency of the said proceeding.

Ms. Bhowal submits that certain objections pertaining to the petitioner's pay have been raised from the office of the respondent no.5. The same could not be answered and uploaded in view of the contrary statements in the pension papers submitted by the petitioner.

In such circumstances, this Court directs the respondent no.2 to take appropriate steps towards settlement and disbursement of the petitioner's full pensionary benefits, in accordance with law and in the light of the observations made in this order, upon granting an opportunity of hearing to the petitioner and the school authorities and to forward all necessary papers to the respondent no.5 within a period of four weeks from the date of communication of this order along with a copy of the writ petition.

Thereafter the respondent no.5 shall take all follow up steps so that the benefits can be disbursed in favour of the petitioner two weeks thereafter.

It is made clear that the school authorities shall appear on the date scheduled for hearing by

the respondent no.2 and produce all relevant records including hard copies of the pension file of the petitioner so that dispute can be resolved.

The respondents shall not withhold the full pensionary benefits of the petitioner due to pendency of the judicial proceeding, as discussed above.

With the above observations and directions the writ petition is disposed of.

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

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

(Tapabrata Chakraborty, J.)