14.07.2021
Item no.37
Aloke
Ct. no.16

(Through Video Conference)

WPST 6 of 2020

Binayak Dutta & Ors.
Versus
The State of West Bengal & Ors.

Mr. Soumya Majumder, Adv.
Ms. Namrata Chatterjee, Adv.
Mr. Souvik Dian, Adv.
... for the petitioners
Mr. Tapan Kr. Mukherjee, Adv.
Mr. Somnath Naskar, Adv.
Ms. Tuli Sinha, Adv.
... for the State

The writ petitioners were the applicants before the learned Tribunal in which they have sought for direction upon the respondent authorities for extending the benefit of Modified Career Advancement Scheme (in short MCAS) in terms of the Memorandum No. 10580-F (P) dated December 28, 2012 issued by the Joint Secretary to the Government of West Bengal, Finance Department, Audit Branch after setting aside the Memorandum dated January 17, 2014 and the Memorandum dated May 20, 2013.

The challenge to the said notifications is on the ground that the subsequent notifications are at variance with the original Memorandum dated March 13, 2001 and extending the benefit of movement to third higher scale of pay was done irrationally. It is being argued before the learned Tribunal that after extending the benefit of movement to third higher scale of pay by the notification dated December 28, 2012, the respondent authorities have arbitrarily and irrationally withdrawn such benefit in the subsequent notification. The writ petitioners have challenged the subsequent notifications to be discriminatory, arbitrary and in violation of Article 14 of the Constitution of India. There cannot be any doubt that if the Memorandum dated January 17, 2014 stands then the writ petitioners are not entitled to any relief.

The learned Tribunal has proceeded on the basis that the Memorandum dated December 28, 2012 has fixed the cut off date for eligibility to the benefits of MACS and in view of the failure on the part of the learned counsel representing the writ petitioners to specify from which particular date the period of 25 years will be completed for the purpose of granting benefit of MCAS in terms of the Memorandum dated December 28, 2012 rejected the prayer of the writ petitioners. However, subsequently on December 24, 2013 a Memorandum was issued by the Government which inter alia states :

> *"2. Now, after careful consideration, the Governor has been pleased to extend the 25 years benefit under MCAS'01 with effect from 01.12.2012 to direct recruit WBSLRS – Gr. I Officers who joined prior to 01.01.1996 and whose pay scale has been revised to scale no. 14 under WBS (ROPA) Rules 1998 with effect from 01.01.1996 subject to the fulfilment of existing rules and regulations of the Government for awarding of MCAS'01 benefit.*
> *3. 25 years is to be counted from the date of initial appointment as Revenue Officer under WBSLRS Gr.-I and they may be allowed the pre-revised*

> *scale no. 17 (Rs.10,000-15,525/-) or the corresponding revised Pay Band – 4A plus Grade Pay Rs.6600/- which is the third higher scale with reference to the basic scale no. 14 (Rs.5500-11,325), allowed in terms of F.D. Memo No. 10580-F(P) dated 28.12.2012 for completion of 25 years of service with effect from 01.12.2012 read with F.D. Memo No. 3015-F dated 13.03.2001.".*

This memorandum if taken into consideration prima facie establishes that the writ petitioners would be entitled to the benefit of MCAS'01. However, the subsequent notification of January 17, 2014 denies such right to the writ petitioners. The Tribunal was invited to decide as to whether in view of the earlier circulars the subsequent Memorandum would stand as prima facie the writ petitioners were extended the benefit of MCAS under the previous two Memoranda mentioned hereinabove. This issue in our view, has not been properly addressed by the learned Tribunal.

On such consideration, we are of the view that the matter has to be heard by the learned Tribunal afresh. The challenge to the Memorandum dated May 20, 2013 and January 17, 2014 are required to be gone into. The Tribunal appears to have overlooked the Memorandum dated December 24, 2013 issued subsequent to December 28, 2012. The order of the learned Tribunal is accordingly set aside. The learned Tribunal is directed to decide the matter afresh after taking into consideration the observations made by us in this order. We set aside the order on the ground that we do not find any adequate reasons in the order of the learned Tribunal for not accepting the submissions of the writ petitioners with regard to setting aside of the Memorandum dated May 20, 2013 and January 17, 2014 and the Tribunal shall revisit the issues raised being uninfluenced by the observations made by the Tribunal in the earlier order which has since been set aside.

All points are left open to be decided by the learned Tribunal in accordance with law.

It is made clear that we have not expressed any final opinion as to the legality and validity of the Memorandum dated May 20, 2013 and January 17, 2014 and it would be open for the learned Tribunal to decide the prayer of the writ petitioners with regard to the quashing or setting aside of the aforesaid two Memoranda as prayed for in paragraph 8(c) of the original application independently. The learned Tribunal is requested to hear the application afresh and dispose of the said matter as expeditiously as possible.

With the above observation, the writ petition is disposed of.

All parties shall act on the basis of the server copy of this order downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.) **(Soumen Sen, J.)**