

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

W.P.S.T. 19 of 2020

Date of hearing:- 26.02.2021

Date of decision:-10.06.2021

The Principal Secretary, Department of Finance, Government of West Bengal

...Petitioners

-versus-

Amalendu Bikas Mohapatra & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL, CHIEF JUSTICE (ACTING)

HON'BLE MR. JUSTICE ANIRUDDHA ROY

Present:- Mr. Joytosh Majumder, Learned Government Pleader,
Mr. Pinaki Dhole, and
Ms. Kakali Samajpaty, Advocates

...for the petitioner

Mr. Amalendu Bikas Mahapatra

...for the respondent No.1

ORDER

Aniruddha Roy, J.:

1. The present writ petition has been filed by the State employer challenging the order dated April 3, 2019 (for short, the impugned order) passed by the West Bengal Administrative Tribunal, Kolkata (for short, the Tribunal) in OA No. 1366 of 2014 (Amalendu Bikas Mahapatra vs. The State of West Bengal & Ors) [for short, the

Original Application], whereunder, direction was made for revision of the leave encashment of the first respondent in the manner stated therein.

2. The first respondent was employed as Assistant Evaluation Officer under the Administrative Control of Additional Director of Agriculture (Evaluation), Directorate of Agriculture, West Bengal. He superannuated on August 31, 2007. The first respondent had received all his retirement benefits as well as pension as on the date of his superannuation. Subsequently, the Revision of Pay and Allowances Rules, 2009 (for short, ROPA 2009) came into force w.e.f. January 1, 2006. According to the first respondent he had received the revised pension payment order on May 3, 2011 for difference of gratuity and Commuted Value of Pension. The grievance of the first respondent was that the leave encashment for unutilized 300 days earned leave as provided under Rule 168 (A) of the West Bengal Service Rules, Part I, 1971 (for short, the 1971 Rules) was not revised in terms of ROPA 2009. Ventilating such grievance the first respondent filed a previous Original Application being OA No. 1377 of 2011 before the Tribunal, claiming the difference of leave encashment of 300 days of earned leave on the basis of ROPA 2009. Vide order dated December 11, 2011 the said previous Original Application was disposed of directing the Finance Secretary to treat the same as his representation and dispose of the same after giving a personal hearing to him.

3. On February 8, 2013 the Finance Secretary passed his reasoned order rejecting the claim of the first respondent. On the basis of the said reasoned order a contempt application was filed by the first respondent before the Tribunal in connection with the said previous

Original Application. The same was dropped vide order dated February 27, 2013.

4. Being aggrieved by the said order dated February 27, 2013 the petitioner filed a writ petition before this Court being WPST 413 of 2013. The same was disposed of by this Court vide order dated November 25, 2013 directing the petitioner to take appropriate decision with regard to the claim of first respondent for sanctioning the leave encashment benefit after providing an opportunity of hearing to him. By an order dated April 23, 2014 the petitioner rejected the claim of the first respondent holding, inter alia, that leave encashment benefit under the policy of the State employer is not a part of the retiral benefits.

5. Being aggrieved by the said decision of the petitioner dated April 23, 2014 the said Original Application was moved by the first respondent which was disposed of by the impugned order.

6. Mr. Joytosh Majumdar, the learned Government Pleader, appearing with Mr. Pinaki Dhole and Ms. Kakuli Samajpati, Advocates representing the State employer/writ petitioner, at the outset submitted that, the benefit of right to receive cash equivalent to leave salary, for the period of unutilized leave earned accruing as on the date of retirement is a condition of service. The entitlement of the employee as to the same are provided and dealt with under Rules 168 and 168A of the 1971 Rules. Referring to the said Rule he submitted that, the leave salary of a State employee on account of unutilized leave is not a retiral benefit. The Tribunal while passing the impugned order had failed to appreciate the aforesaid submission, misconstrued the relevant Service Rules and passed the impugned order. He submitted that, ROPA 2009 was given effect to

from January 1, 2006 notionally and the actual effect was granted from April 1, 2008. All the serving employees were granted the actual benefit from April 1, 2008 and onwards. No arrear on difference of pay was allowed to any State employee for the period between January 1, 2006 and March 31, 2008, as the benefit accrued to the employee was given notionally and the actual payment of difference was made w.e.f. April 1, 2008. Thus, the employees who retired w.e.f. April 30, 2008 or thereafter received the actual benefit of ROPA 2009. As such the first respondent who had retired from service on August 31, 2007 cannot have any right to receive the leave encashment benefit in terms of ROPA 2009 and the claim in this regard is wholly frivolous, misconceived and without any merit.

7. The first respondent appeared in person and submitted that, ROPA 2009 came into force w.e.f. January 1, 2006. He submitted that, the relevant Service Rules does not prohibit allowing the leave salary benefit to be paid to him in terms of ROPA 2009. He further submitted that, the leave encashment benefit had been earned by him in course of his employment tenure and as such he is entitled to receive such benefit in terms of ROPA 2009 in addition to what he had already received. On January 1, 2006 when ROPA 2009 came into force he was in employment. Thus, he submitted that, in the previous round of litigations specific directions were passed by the Tribunal as well as by this Court to consider his claim. He submitted that, all such directions were made upon considering that the claim of the first respondent being legitimate and otherwise tenable.

8. The first respondent further submitted that, the State employer having not allowed the claim of the petitioner had acted in contempt of the directions earlier issued by the Tribunal and this Court.

9. In support of his contentions the first respondent had relied upon several judgments, which are, *In the matter of: Priya Gupta & Anr. vs. Additional Secretary, Ministry of Health and Family Welfare & Ors.*, reported at (2013) 11 SCC 404; *In the matter of: Amalendu Kumar Bera & Ors. vs. State of West Bengal*, reported at (2013) 4 SCC 52; *In the matter of: Regional Manager, Central Bank of India vs. Madhulika Guruprasad Dahir & Ors.*, reported at (2008) 13 SCC 170; *In the matter of: Union of India & Ors. vs. Nripen Sarma*, reported at (2013) 4 SCC 57; *In the matter of: State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr.*, reported at (2013) 12 SCC 210 and *In the matter of: Postmaster General & Ors. vs. Living Media India Limited & Anr.*, reported at (2012) 3 SCC 563.

10. Having heard the submissions made on behalf of the parties and on perusal of the material before this Court, it appears that, the relevant facts, namely, the first respondent retired on August 31, 2007, ROPA 2009 came into force w.e.f. January 1, 2006 but the actual effect was given on and from April 1, 2008 and that the first respondent had received all his retirement benefits including the leave encashment benefit, are not disputed by the parties.

11. Rule 168 and 168A of the 1971 Rules are reproduced herein below:

Leave preparatory to retirement.

168. (1) A government employee may be permitted by the authority competent to grant leave to take leave preparatory to retirement to the extent of earned leave due not exceeding 240 days together with half-pay leave due, subject to the condition that such leave extends up to and includes the date of retirement.

(2)(a) Where a Government employee who is on foreign service in or under any local authority or in a corporation or company wholly or substantially owned or controlled by the Government or a body controlled or financed by the Government (hereinafter referred to as the local body) applies for leave preparatory to retirement, the decision to grant such leave shall be taken by the foreign employer with the concurrence of the lending authority under the Government.

(b) The Government employee on foreign service shall also be allowed to encash earned leave at his credit on the date of retirement in the manner provided in sub-rule (2) of rule 168A.

(3) Where a Government employee is on foreign service in or under a local body other than those mentioned in clause (a) of sub-rule (2), leave preparatory to retirement shall be admissible to him only when he quits duty under the foreign employer:

Provided that where the Government employee continuous in service under such foreign employer, he shall not be eligible for grant of cash payment in lieu of leave under rule 168A.

168A. (1) No leave shall be granted to a Government employee beyond-

(a) the date of his retirement on superannuation, or

(b) the date of his final cessation of duties, or

(c) the date on which he retires by giving notice to Government or he is retired by Government by giving him notice or pay and allowances in lieu of such notice,

*in accordance with terms and conditions of his service,
or*

(d) the date of his resignation from service.

(2)(a) Where a Government employee retires on attaining the age of superannuation, the authority competent to grant leave shall suo motu issue an order granting cash equivalent of leave salary for earned leave, if any, at the credit of the Government employee on the date of his retirement, subject to a maximum of 240 days.

(b)(i) The cash equivalent under clause (a) shall be calculated as follows and shall be payable in one lump sum as one time settlement. No house rent allowances or hill allowance or other compensatory allowances will be admissible. Medical allowance not being a compensatory allowance may be granted along with such leave salary.

(ii) such cash equivalent shall not be subject to reduction on account of pension and pension equivalent to gratuity.

(3) A Government employee who retires from service on attaining the date of retirement while under suspension, shall become eligible for the benefit of cash equivalent of earned leave that was at his credit on the date of his retirement calculated in the manner provided in clause (b) of sub-rule (2), on conclusion of the proceedings against him, if the authority competent to re-instate him in service holds that the suspension was wholly unjustified.

(4) A Government employee who retires or is retired from service in the manner mentioned in clause (c) of sub-rule (1) may be granted, suo motu, by the authority competent to

grant leave, cash equivalent of leave salary in respect of earned leave at his credit subject to a maximum of 240 days and also in respect of all the half pay leave at his credit, provided this period does not exceed the period between the date on which he so retires or is retired from service and the date on which he would have retired in the normal course after attaining the age of superannuation.

The cash equivalent shall be equal to the leave salary as admissible for earned leave and/or equal to the leave salary as admissible for half pay leave plus dearness and medical allowances as admissible on that leave salary for the first 240 days, at the rates in force in the date the Government employee so retires or is retired from service. The pension and pension equivalent of other retirement benefits and ad-hoc relief/graded relief on pension shall be deducted from the leave salary paid for the period of half pay leave, if any, for which the cash equivalent paid for the period of half pay leave, if any, for which the cash equivalent is payable. The amount so calculated shall be paid in one lump sum as one time settlement. No house rent allowance, hill allowance and other compensatory allowance shall be payable:

Provided that if leave salary for half-pay leave component falls short of pension and other pensionary benefits, cash equivalent of half-pay leave shall not be granted:

Provided further that a Government employee who is retired by Government by giving him pay and allowances in lieu of notice, may apply for leave within the period for which such pay and allowances were given, and where he is granted

leave, the leave salary shall be allowed only for the period of leave excluding that period for which pay and allowances in lieu of notice have been allowed.

(5)(i)(a) Where the services of a Government employee are terminated by notice or otherwise in accordance with the terms and conditions of his appointment may be granted, suo motu by the authority competent to grant leave, cash equivalent in respect of earned leave at his credit on the date on which he ceases to be in service subject to a maximum of 240 days.

(ii) If a Government employee resigns or quits service, he may be granted suo motu by the authority competent to grant leave, cash equivalent in respect of earned leave at his credit on the date of cessation of service, to the extent of half of such leave at his credit, subject to a maximum of 120 days.

(iii) A Government employee who is reemployed after retirement, may on termination of his re-employment, be granted, suo motu, by the authority competent to grant leave, cash equivalent in respect of earned leave at his credit in the date of termination of re-employment subject to a maximum of 240 days including the period for which encashment was allowed at the time of retirement.

(b) The cash equivalent under clause (a) shall be equal to leave salary admissible for earned leave calculated under rule 176 plus dearness and medical allowance admissible on that leave salary at the rates in force on the date the Government employee ceases to be in service. The amount so calculated shall be paid in one lump sum as one time

settlement. No house-rent allowance or hill allowance or other compensatory allowance shall be payable.

12. From a plain reading and construction of the relevant Service Rules as quoted above, it is clear that a government employee may be permitted by the employer to take leave preparatory to retirement to the extent of earned leave due not exceeding 240 days together with half-pay leave due, subject to the condition that such leave extends up to and includes the date of retirement. No leave shall be granted to a government employee beyond the date of his retirement on superannuation or the date of final cessation of service. The first respondent had admittedly superannuated from his service on August 31, 2007. Thus, according to the said Service Rules, under which the first respondent was governed, the first respondent is not entitled to nor can claim any benefit on account of or attached to his leave beyond the date of his superannuation i.e. August 31, 2007. Therefore, the claim of the first respondent on account of his leave encashment quantum in terms of ROPA 2009 which notionally came into force w.e.f. January 1, 2006 has no merit. ROPA 2009 was effected actually w.e.f. April 1, 2008, when admittedly the first respondent was superannuated. It is elementary that an employee can only take leave during his service tenure and not beyond and as such any benefit attached with such leave can only be claimed by such an employee for his service tenure and not beyond that. Therefore, the first respondent could and cannot claim any benefit under ROPA 2009 beyond his service tenure.

13. In as much as, the petitioner was superannuated on August 31, 2007 and he had admittedly received all his service benefits immediately thereafter. ROPA 2009 notionally came into force w.e.f.

January 2006 and actual effect was given w.e.f. April 1, 2008. The first respondent for the first time about four years after his superannuation in 2011 filed the previous Original Application being OA 1377 of 2011 before the Tribunal and lodged his claim. In any event the said previous application was beyond the period of limitation as prescribed under Section 21 of the Administrative Tribunal Act, 1985. This clearly shows that the challenge of the first respondent even at the initial stage was a result of an after thought. Be that as it may, finally by an order dated April 23, 2014 the petitioner rejected the claim by showing elaborate reasons.

14. From a close perusal of the said reasoned order dated April 23, 2014 passed by the petitioner it appears to this Court that the same is well founded and reasoned and the same was passed on due consideration of the relevant materials and the applicable legal provisions in the present case.

15. *In the matter of: Priya Gupta & Anr. (supra)*, the Hon'ble Supreme Court had laid down general principles which can constitute a willful disobedience/contumacious conduct to proceed in a contempt proceeding and sentencing as justified. *In the matter of: Amalendu Kumar Bera & Ors.(supra)*, the Hon'ble Supreme Court had laid down principles as to what would constitute as sufficient cause within the meaning of Section 5 of the Limitation Act and to construe such sufficient cause with a liberal approach and not warranted to be accepted even in favour of a State litigant, if it not otherwise to the satisfaction of the Court. *In the matter of: Regional Manager, Central Bank of India (supra)*, this was a case where a fraud was practiced by a concerned employee while submitting the necessary documents to obtain the service. The Hon'ble Supreme

Court had observed that in case of a fraud equitable jurisdiction of High Court is not available to such employee. *In the matter of: Union of India & Ors. (supra)*, it was again a case of unsatisfactory explanation of delay in filing an appeal. *In the matter of: State of Jharkhand & Ors. (supra)*, it was on the point that an executive instruction cannot substitute the law/rules. *In the matter of: Postmaster General & Ors.(supra)*, this was again a judgment on condonation of delay in connection with Section 5 of the Limitation Act, 1963. The ratio decided in all these judgments referred to on behalf of the first respondent have no application in the facts and circumstances of this case. The question of condonation of delay in filing a proceeding is not the subject matter in the present writ petition. The question of exercise of equitable jurisdiction by a Writ Court in the facts and circumstances of this case is also not an issue in the present writ proceeding. In as much as, the relevant service rules as already discussed above specifically provides that beyond the period of superannuation no benefit of leave is available to a government employee. In as much as ROPA 2009 was actually given effect to much after superannuation of the first respondent and as such the first respondent cannot claim any benefit thereunder. So the question of substituting any law or rules by ROPA 2009 does not and cannot arise in the facts of this case.

16. In view of our foregoing discussions and the reasons mentioned above the writ petition is allowed. Impugned order dated April 3, 2019 passed by the Tribunal stands set aside. The reasoned decision of the petitioner dated April 23, 2014 stands affirmed and is not interfered with.

17. The present writ petition being **W.P.S.T. 19 of 2020** stands allowed.

(Rajesh Bindal)
Chief Justice (Acting)

(Aniruddha Roy)
Judge

Kolkata
10.06.2021

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P.A. (RM)