

03.02.2021

Ct. No.13

Sl. No.23

akd

W.P.A. 10616 of 2018 [via video conference]

[Shyamapada Banerjee -Vs- The State of West Bengal & Ors.]

Ms. Surasri Baidya

... for the petitioner

Mr. Pinaki Bhattacharyya

Mr. Debojyoti Maity

... for the respondent no.2

Mr. Amajit De

... for the respondent no.10

Mr. Susanta Pal

Mr. Ananda Dulal Sarkar

... for the State

Notice dated 22.01.2021 as well as the whatsapp message issued by the petitioner to the respective counsels be kept on record.

The writ petitioner's grievance is that he joined military service as a Signaller under the Corps of Signals and was discharged on 17.12.1970 under the certificate of discharge with recommendation for civil employment. The petitioner served for 7 years and 44 days in military service.

The writ petitioner joined as Lower Division Clerk in the Court of the Chief Metropolitan Magistrate, Kolkata on 2nd May, 1972 after a gap of nearly 1½ years.

The petitioner has a three fold prayer before this court.

- (i) The period spent in military service must be counted for the purpose of the tenure of eligibility for pension post his retirement from service under the Chief Metropolitan Magistrate, Kolkata.

- (ii) he is entitled to the benefits of Sethi Commission recommendations; and
- (iii) that despite repeated requests his terminal benefits have not been released to him which includes pension.

The respondent nos. 3 & 10 have little or nothing to say in the matter and submit that unless the service book of the petitioner is received, no steps can be taken on their part to release the petitioner's terminal benefits.

Report by way of Affidavit filed by the respondent no.5 admits that the service book of the petitioner has been misplaced and an order has been passed directing reconstruction thereof. It is further admitted by the learned advocate for the State that the petitioner would be entitled to benefits of Sethi Commission recommendation. It is, however, contended that the petitioner would not be entitled to pension under the Death-cum-Gratuity scheme of the Government as he is about 11 months and one day short of the minimum period of 33 years of qualifying service.

The learned advocate for the petitioner would rely upon Rule 194 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which stipulates that a government servant who is re-employed in civil service or post before attaining the age of super-annuation and who, before such re-employment, had rendered regular military service after attaining the age of eighteen years may, on his being declared confirmed on quasi-permanent or to be in service with permanent status in a civil service or post would be entitled to the period spent in military

service to be counted for the purpose of length of service in civilian post for pension. The conditions, therefor, are already stipulated under Rule 194 of the said Rules of 1971.

This Court notes that firstly the said Rule applies in case of government servant who is re-employed in a civil service post. The case of the petitioner is not a case of re-employment since the petitioner was discharged from military service and after a gap of nearly 1¹/₂ years, he joined civil service on 2nd May, 1972. The petitioner was not entitled to any pension or other benefits under the military service. Since the petitioner's service under the military did not count for any pension, question of such service being considered or counted for the purpose of pension pursuant to his retirement from civil service does not arise. The petitioner would have been entitled to such counting of military service if the said service was for a period for which pension or other benefits were payable by the Military. Such interpretation is the only one that is warranted from a plain reading of Rule 194(1) to (6) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971.

The petitioner is, therefore, not entitled to pension. However, since the Judicial Secretary has stated in his report that the petitioner's service book is in the process of reconstruction, it is ordered that the office of the Chief Metropolitan Magistrate, Kolkata shall reconstruct the petitioner's service book forthwith but not later than a period of 30 days from the date of communication of this order.

It appears from the Supplementary affidavit filed by the petitioner that the process of reconstruction has already started

and the petitioner has supplied the initial documents required by the Chief Metropolitan Magistrate. The office of the Chief Metropolitan Magistrate, Kolkata shall, if necessary, seek further documents which shall be supplied by the petitioner immediately upon receipt of such request. The office of the Chief Metropolitan Magistrate, Kolkata shall complete the process of reconstruction within the time stipulated hereinabove mandatorily and positively. The benefits of Sethi Commission recommendation shall be afforded to the petitioner as admitted by the Judicial Secretary in his report.

Upon completion of the service book of the petitioner, the same shall be forwarded to the respondent nos.5 & 10 respectively whereupon the terminal benefits receivable by the petitioner shall be made over to him within a period of two months thereof positively and mandatorily.

With the aforesaid directions, the writ petition is, disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Rajasekhar Mantha, J.)