

27 24.11.21
 Ct. No. 4
 Ab/Saswata

W.P.S.T 64 of 2021

*The Principal Secretary, Dept. of Labour,
Govt. of West Bengal & Ors.*

Vs.

Alok Kumar Sarkar

**Mr. Tapan Kumar Mukherjee, AGP
Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly
....for the petitioners/State**

**Mr. K. K. Lahiri,
Mr. Debaditya Chattopadhyay
... for the respondent**

The present writ petition is at the behest of the Government, assailing an order no. 3 dated 29th November 2019, passed by the West Bengal Administrative Tribunal in OA 708 of 2019 by which a direction was passed upon the Principal Secretary to the Government of West Bengal, Department of Labour to take necessary steps for revised leave encashment on the basis of the notional fixation of pay on the date of the retirement in terms of ROPA 2009. The respondent/petitioner filed the tribunal application for grant of the balance amount of revised leave encashment which was turned down by the Principal Secretary, Government of West Bengal, Department of Labour vide order dated December 15, 2017.

It is undisputed that the private respondent/petitioner retired on October 31, 2006 and after the promulgation of the West Bengal

Services (Revision of Pay and Allowances) Rule, 2009, the effect thereof was given on and from January 1, 2006 but subsequently, the Government decided not to extend the financial benefit after fixation of pay to the Government employees from the date of its coming in force but from a fixed date that is April 1, 2008.

The contention of the respondent/petitioner was that since he received his pension, gratuity and the commuted value of pension as per the revised scale in terms of ROPA 2009, but was denied the encashment of the leave on such revised scale, that is on the basis of the notional fixation of pay on the date of the retirement.

The Tribunal, while allowing an application relied upon its judgment delivered in the case of ***Amalendu Bikas Mahapatra -vs- The State of West Bengal & Ors. (OA 1366 of 2014)***, wherein it was held that any Government employee retiring on August 31, 2007, after obtaining a notional fixation of pay on the date of the retirement, is entitled to get the revised leave encashment on the basis of the notional fixation of pay on the date of the retirement in terms of ROPA 2009. It was thus held that in view of such decision, the respondent/petitioner is entitled to the relief claimed in the Tribunal application.

Our attention is drawn to the fact that the judgment relied upon by the Tribunal in the case of ***Amalendu Bikas Mahapatra (Supra)*** was assailed before this Court in the writ jurisdiction and the same was set aside by the Division Bench.

Since the ratio of the judgment lost its binding efficacy having set aside by the higher forum, the decision founded thereupon cannot withstand independently, but has to fall as a consequential effect.

Though the learned Advocate for the private respondent/petitioner tries to impress us that apart from the said judgment, the respondent/petitioner has a merit in the case but since the impugned judgment was passed upon the said decision, which was subsequently set aside by the High Court, it cannot withstand and a fresh decision is required to be taken by the Tribunal on merit. Though a plea is taken by the private respondent/petitioner that an application for review has been filed challenging the order of this Court, rendered in the case of ***Amalendu Bikas Mahapatra (Supra)***, but unable to apprise the Court that the operation of the said judgment was stayed. Even if a review is filed and there is no order of interdict, it does not lose its binding efficacy and the ratio remains binding not

only between the parties but on the subject, so decided.

The aforesaid expression can be strengthened from another angle. When the legislatures have incorporated expressed provision relating to an appeal, where mere filing an appeal does not tantamount to stay of enforceability of the order (see: Order XLI Rule 5 CPC), mere filing a proceeding before this Court and in absence of any expressed order staying the operation of the said order, such order remains binding between the parties or the law laid down therein remain effective.

Since the entire impugned order was based upon the said judgment which has been set aside, we thus set aside the impugned order and remand the matter back to the Tribunal for consideration on merit and in accordance with law.

With these observations the writ petition being W.P.S.T. 64 of 2021 is disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

