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05-01-2021

Ct. 12

MAT 1678 of 2019
With
CAN 1 of 2019 (Old CAN 12248 of 2019)

Sri Pallab Kumar Banerjee
Versus
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Narayan Ch. Mandal, Adv.
Ms. Mousumi Chatterjee, Adv.
Mr. Bhaskar Mandal, Adv.
...for the appellant

Mr. Joytosh Majumder, Id. GP
Md. Yasin Ali, Adv.
Ms. Tapati Samanta, Adv.
...for the respondents

By consent of the parties, the appeal and the applications are treated as on the day's list and disposed of by this common order.

The appellant is the son of Tapasi Roy (Banerjee), who died-in-harness in 2007. Tapasi Roy (Banerjee), was appointed to the post of Librarian at Pipla Palli Samity on 5th September, 1983. She was placed in the scale of diploma holders though at the time of appointment, she was having a bachelor of Library and Information Science Degree. She died in harness on 2nd November, 2007 leaving behind the writ petitioner as the sole surviving heir. The petitioner made an application for compassionate appointment on 8th March, 2008. His application, however, was processed only in 2019 on the basis of a declaration furnished by him on 5th April, 2017.

It is pertinent to mention here that he became major at least six years prior to the process initiated by the department and there has been some delay on the part of the department in finalizing his application for compassionate appointment. It is also not in dispute that the father

of the writ petitioner predeceased his wife and in the year 2007 at the time of the death of her mother, the writ petitioner was living with her mother and was wholly dependent on her.

After he was appointed on 8th January, 2019 on compassionate ground under died-in-harness category to the vacant post of Junior Library Attendant (Gr-D) at Hannan Fazlul Memorial Club and Library provisionally for two years with other service conditions, in or about 27th February, 2019, writ petitioner made an application to the District Library Officer for release of all admissible benefits of his late mother upon revising scale of pay in terms of the judgment of the Hon'ble Supreme Court of India. In the representation, the writ petitioner contended that the mother of the writ petitioner in spite of a degree holder of Library Science was getting salary of a diploma holder and, accordingly, the scale of pay is required to be revised and the consequential benefits are to be given to the writ petitioner as the sole beneficiary of Late Tapasi Roy (Banerjee).

The aforesaid narration of facts emanate from the record are undisputed. We reiterate that this factual narration has not been contradicted by the learned Counsel for the parties. We further put it on record that the entitlement of the mother of the writ petitioner during her service period to a higher scale of pay is also not in dispute.

Due to non-consideration of the said representation, the writ petition was filed before this Court. Before the learned Single Judge it was contended that on the basis of the judgment of the Hon'ble Supreme Court, the representation dated 27th February, 2019 claiming lifetime arrears of revised benefits to which the mother of the writ petitioner was entitled should have been decided and allowed in favour of the writ petitioner.

The State did not file any affidavit, however, the State resisted the claim of the writ petitioner on the ground of delay in approaching the Court. The delay was explained by Mr. Narayan Ch. Mandal, learned Counsel representing the writ petitioner/respondent in this proceeding in submitting that the issue towards grant of revised benefit to Librarians was finally decided by a Coordinate Division Bench in the year 2018 and as such there had been no delay on the part of the petitioner in approaching the Court. The learned Single Judge on the basis of available record although accepted the contention of the writ petitioner that at the time of appointment, the mother of the writ petitioner was a bachelor of Library and Information Science degree holder, but having regard to the fact that she accepted the said scale of pay and in absence of any provision brought to the notice of the Court by the writ petitioner towards extension of lifetime arrears of revised benefits of a deceased Librarian to his/her heir the writ petitioner is not entitled to such benefit. The learned Single Judge has also recorded that the petitioner did not disclose that he was granted compassionate appointment in the year 2019.

Mr. Jaytosh Majumder, learned Government Pleader has supported the said judgment and has strenuously argued that delay defeats equity and that the writ petitioner was not candid before the appropriate authority with regard to the disclosure of the information for consideration of his case under the died-in-harness category. It is further submitted that it is well-settled that the Writ Court as a Court of Equity will not come to the aid of a person who is a fence sitter or was sitting tight over his rights. In this regard the learned Government Pleader has relied upon two decisions of the Hon'ble Supreme Court, namely, (i) ***Chennai Metropolitan Water Supply and Sewerage Board and Ors. vs. T.T. Murali Babu*** reported in (2014) 4 Supreme

Court Cases 108 (para 16 and 17) and (ii) in the case of *Union of India & Ors. vs. Tarsem Singh* reported in *(2008) 8 Supreme Court Cases 648 (para 7)*. The learned Government Pleader has also produced the application form and the representation made by the writ petitioner for release of admissible benefits in his favour.

Per contra, Mr. Mondal, learned Counsel appearing on behalf of the writ petitioner has submitted that the petitioner was not aware of the fact that his mother was being paid a scale of pay not that of a degree holder but a diploma holder and having come to learn about the right of a person to a higher service benefits in the year 2018 by reason of the order of the Hon'ble Division Bench and a representation was made to the authorities concerned for release of admissible dues to the writ petitioner.

Mr. Mondal, in this regard, has relied upon a decision of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.* reported in *(2015) 1 Supreme Court Cases 347 (para 22.3)*. He submits that the aforesaid decision is a pointer to the fact that the entitlement to benefit of *judgment-in-rem* with intention to give benefit to all similarly situated persons, irrespective of whether they had approached the court or not, delay or laches or acquiescence would not be a factor.

The right to receive the lawful dues of an employee upon his death by her heir is not in dispute. The entitlement of the petitioner to the admissible dues of her mother was resisted solely on the ground of delay and laches. At this stage, it is important to refer to the decisions cited by the learned Government Pleader to resist the claim of the writ petitioner on the ground of delay or laches. In *Tarsem Singh* (supra) the Hon'ble Supreme Court was considering the case of a person who

was declared invalid to remain in service on 13-11-1983 and approached the High Court as late as in 1999 for grant of disability pension. The writ petition was allowed by the learned Single Judge but grant of arrear was restricted to a period of three years and two months prior to filing of the writ petition. The Hon'ble Division Bench, however, allowed arrears to the respondent from 13-11-1983 itself. The question that had fallen for consideration before the Hon'ble Supreme Court was, whether the relief could be granted to the respondent from 13-11-1983 itself despite the fact that there was considerable delay on his part in approaching the High Court. In the said decision, the Hon'ble Supreme Court has discussed the essence of a continuing wrong and drew a distinction between the injury caused by the wrongful act and what may be described as the effect of said injury. In para 7 the law was discussed succinctly in the following words:

*“7. To summarize, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. **For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and***

doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.” (Emphasis supplied)

The Hon’ble Supreme Court ultimately held that the High Court was not justified in directing payment of the arrears relating to 16 years and that too with interest and it ought to have restricted the relief relating to arrear to only three years before the date of writ petition or from the date of demand to the date of writ petition whichever was lesser. This case recognizes that the delay or acquiescence by itself would not defeat the right to a writ petition if he is otherwise entitled to a relief and in Paragraph 7 itself it is clearly indicated that if the issue relates to payment or refixation of pay or pension relief may be granted in spite of delay as it does not affect the rights of third parties. The Supreme Court in the case of Chennai Metropolitan Water Supply (supra) also echoed the same sentiment. In the instant case, it relates to wrong fixation of pay of a person who had served the institution unblemishly but was paid less by the State. Under the Indian Constitution which envisage a welfare state, the Union or the State as the case may be is to act as a model employer. A just claim should not be defeated on mere technicalities or on the ground of limitation. There are catena of decisions of the Hon’ble Supreme Court where the Hon’ble Supreme Court has specifically stated that the Government should not take the point of limitation to defeat a just claim.

In the *State of Uttar Pradesh* (supra) it has been categorically stated that where the judgment pronounced by the Court was judgment-in-rem with intention to give benefit to all similarly situated

persons, whether they approached the Court or not and obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like. In the instant case the issue with regard to higher scale of pay was considered by a Coordinate Bench in ***Pradip Kumar Karak & Ors. Vs. The State of West Bengal & Ors. passed on 4th May, 2018*** in which in Paragraph 139 the Hon'ble Division Bench has observed as follows:-

“139. However, those librarians who have acquired higher qualifications before the cut-off date of July 21, 1990 are entitled to claim that they be treated at par with the librarians (Shibnath Koley & others) who were before the Hon'ble Supreme Court as respondents in Civil Appeal Nos. 6967-6970 of 2009. In fact, the State in its counter-affidavit before the Hon'ble Supreme Court was also candid in its stance that at least some of the appellants were entitled to better pay based on higher qualifications without, however, identifying them. In my opinion, the issue as to whether the librarians who had acquired higher qualifications before the cut-off date i.e. July 21, 1990 is no longer res integra in view of the decision of the Hon'ble Supreme Court in Shibnath Koley (supra)”.

The judgment refers to the counter-affidavit before the Hon'ble Supreme Court which clearly shows that the State had accepted that there are persons with higher qualifications but were paid less. Before us it is accepted that the mother of the writ petitioner was paid less.

Our attention is drawn to ROPA, 1990 Rules 4 and 5 with regard to the drawal of pay in the revised scales. The said Rules are as follows:-

“4. Drawal of pay in the revised scales. – Save as otherwise provided in this order, an employee shall draw pay in the revised scale applicable to the post to which he is

appointed:

Provided that an employee who was in service on the 31st December, 1985 and who opts to come over to the revised scale of pay together with the revised terms and conditions of service, as may be determined by the Government, may elect to draw pay in the revised scale from any date between the 1st January, 1986 and the 1st January, 1990 and continue to draw pay in the existing scale prior to that date. On electing to draw pay in the revised scale, such an employee shall draw pay in the revised scale corresponding to his existing scale.

5. Option. – (1) The option under the proviso to para 4 shall be exercised within 90 days from the date of issue of this order.

(2) A teacher or a non-teaching employee of a Government Aided/Sponsored educational institution who was in service on the 31st December, 1985 may, at his discretion, retain his existing scale of pay and existing terms and conditions of service:

Provided that such a teacher or a non-teaching employee who has not attained the age of superannuation, as prescribed in para 17, on the date of issue of this order and who will not attain the age of superannuation, as prescribed in para 17, within 90 days from the date of issue of this order may come over to the revised scale of pay together with the revised terms and conditions of service as may be determined by the Government, with effect from such date as he may choose in terms of the proviso to para 4, by exercising option in this regard in the appropriate form within 90 days from the date of issue of this order. On coming over to the revised scale of pay, such a teacher or a non-teaching employee shall retire on attaining the age of superannuation as prescribed in para 17:

Provided also that a teacher or a non-teaching employee who even after attaining the age of superannuating as prescribed in para 17, continued or is continuing in service on the basis of Government Order No. 81-Edn. (B),

dated the 31st March, 1986 or a teaching or a non-teaching employee who will attain the age of superannuation, as prescribed in para 17, within 90 days from the date of issue of this order may come over to the revised scale of pay together with the revised terms and conditions of service as may be determined by the Government, with effect from such date as he may choose in terms of the proviso to para 4, by exercising option in this regard in the appropriate form within 90 days from the date of issue of this order if and only if he has already retired or agrees to retire on the date on which he exercises such option or as the case may be, on the date on which he will attain the age of superannuating, as prescribed in para 17.”

The aforesaid rules are relevant in order to find out whether the mother of the writ petitioner during her service exercised option in terms of the aforesaid Rules. This is the matter, which we feel the authorities concerned would look into and consider in the light of the aforesaid discussions. The right to claim benefits and admissible dues are akin to right to property, which can only be denied if it is contrary to law as there is any prohibition under the relevant rules. In the instant case the benefit is in terms of money – the difference between the salary paid and ought to have been paid. The entitlement of the mother of the writ petitioner to receive such money cannot be disputed. It is not one of such rights which perishes with the death. This money was receivable but not paid. There is no statute shown to us, which prohibits payment of admissible dues to the son of the deceased. Even in one of the cases cited above, dues immediately preceeding three years when the right to sue occurs was allowed. The appointment in the died-in-harness category is independent of a claim based on service benefits of the mother of the writ petitioner who died-in-harness and had admittedly received scale of pay of a diploma holder although she was a degree holder. The object of the State should not be to

perpetuate and perpetrate a wrong and to deny lawful dues of its employees. The State is required to ensure equality and equal protection to its employees who are similarly placed and/or situated. There may be many reasons for which a person may not be able to approach the Court. It cannot be lost sight of the fact that the writ petitioner lost his father in 2004 and his mother in 2008 when he was a minor.

The socio-economic condition of the litigant is also a relevant factor to be taken into consideration in judging as to whether there has been a culpable negligence on the part of the petitioner. It is not a question of extension of lifetime arrears and a revised benefit of a deceased librarian but it is in fact a right to receive a money that was earned by the mother of the writ petitioner during her service career and like all other entitlement that follow death should be extended to her legal heir, namely, the writ petitioner.

On such consideration, we set aside the order under appeal.

The writ petitioner may not be entitled to interest for the delay as his case was considered for compassionate appointment but we feel that the differential amount without interest that was payable to the mother of the writ petitioner during her employment before she died-in-harness requires consideration by the appropriate authorities in the light of the aforesaid observation.

Accordingly, we direct the respondent No.3 to consider the claim of the writ petitioner for admissible dues payable to late Tapasi Roy (Banerjee) in terms of ROPA, 1990.

The entire process should be completed within a period of eight weeks from the date of communication of this order by either of the parties to the respondent No.3.

The appeal being MAT1678 of 2019 and the application being CAN 1 of 2019 (Old CAN 12248 of 2019) are accordingly disposed of.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)