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WPST 196 of 2019
(Through Video Conference)

Ketaki Sankar Adhikaree
Vs.
State of West Bengal and Ors.

Mr. Udayan Chakravarty with
Ms. Sanjukta Bhattacharya
Ms. Nilanjana Dasgupta, Advocates
..for the Petitioner. Present in Court.

Ms. Chaitali Bhattacharyya, Advocate
..for the State. Present in virtual mode.

The petitioner has challenged the order dated 14.2.2019 passed by the West Bengal Administrative Tribunal in OA 229 of 2015. Vide aforesaid order, the Tribunal had dismissed the application filed by the petitioner who was claiming parity of pay scale with Sham Sunder Vinayak who, according to him, was appointed as Assistant Commissioner in the office of Commissioner for the Persons with Disabilities on July 20, 2007 whereas the petitioner was already working as Assistant Commissioner in the office of Deputy Director of Social Welfare since January 11, 2000. As Sham Sunder Vinayak was junior to the petitioner as an Assistant Commissioner, the petitioner was

representing to the department for granting him the same scale of pay as was granted to him. The petitioner was granted pay scale of 8000-13,500/- whereas the pay scale granted to Sham Sunder Vinayak was 12,000-18,000/-.

Another fact which has been recorded is that the petitioner retired from service on April 30, 2011 after attaining the age of superannuation and the Original Application was filed by him before the Tribunal in the year 2015.

In support of his argument the petitioner is entitled to the same scale of pay as was being granted to a person who is junior to him, reference was made to Notes 4 and 5 of Rule 7 of the West Bengal Services (Revision of Pay and Allowance) Rules, 2009.

Learned counsel for the respondents submitted that Sham Sunder Vinayak was absorbed in terms of the order passed by the Hon'ble Supreme Court and he was appointed as per Notification no.2739 SW dated 20th July, 2007.

She further submitted that the petitioner during his service career never raised such an issue and the application was filed only after his retirement Referring to Section 21 of the Administrative Tribunal Act, 1985, the submission is that any order passed by the authority is to be challenged within one year thereof. In

case representation filed by an employee has not been decided the limitation is one year and six months from the date when such representation was filed. In the case in hand the issue having not been raised by the petitioner within the period of limitation before the Tribunal, the claim made by the petitioner deserved to be rejected. Even if such an issue was not raised or considered by the Tribunal as it goes to the root of the case, the same can very well raised before this Court.

In response, learned counsel for the petitioner submitted that the issue of limitation was not raised by the respondents before the Tribunal and the issue has been considered on merits. He should not be non-suited on the ground of limitation. The respondents had not even filed objections despite grant of opportunity.

Heard learned counsels for the parties and perused the records.

Certain undisputed facts, which are relevant for decision of the case, are that the petitioner claims that he was senior to Sham Sunder Vinayak as Assistant Commissioner in the office of Commissioner for the Persons with Disabilities as he was appointed on that post vide order dated January 11, 2000 whereas Sham Sunder Vinayak was appointed on July 20, 2007. The scale of pay granted to the petitioner on the post he was

working was Rs.8,000-13,500 - whereas the scale of pay granted to Sham Sunder Vinayak was 12,000-18,000. It is so reflected in his order of appointment dated July 20, 2007. It is further evident from the record that the petitioner had retired from service after attaining the age of superannuation on April 30, 2011. There is nothing on record that during the service career the petitioner ever made any representation before any authority for grant of same scale of pay as had been granted to a person who allegedly was junior to him. What is evident from a communication dated 16.6.2008 on record is that Commissioner for the Persons with Disabilities, West Bengal had sent a communication to the Joint Secretary, Department of Women and Child Development and Social Welfare, Government of West Bengal that the petition in original form was being forwarded for consideration of the claim of the petitioner that a person junior to him was getting higher pay scale. Subsequent thereto there are certain representations on record starting from 15.5.2012 onwards i.e. after the petitioner had already retired from service on April 30, 2011. It is also a fact that even if the representation had been made by the petitioner during his service career which was forwarded to the government by the Commissioner for the Persons with Disabilities vide communication dated 16.6.2008 the

petitioner never approached the Tribunal raising the grievance. Section 21 of the Administrative Tribunal Act, 1985 provides that in case any order has been passed, an application can be filed within one year from the date on which such order has been passed. However, in case any representation had been filed and the same had not been disposed of, after expiry of six months thereof, within one year from the date of expiry of said period of six months.

In case the representation of the petitioner for grant of pay scale equivalent to the person allegedly junior to him had not been granted to him during his service career, he could have raised the issue by filing the application before the Tribunal within the period of limitation provided under the Act. The same was not done. Not only this even after the petitioner retired from service on April 30, 2011, the Original Application was filed nearly four years thereafter in the year 2015. The same was highly belated.

The argument raised by the learned counsel for the petitioner that such an issue had not been raised by the respondents before the Tribunal, is merely to be noticed and rejected for the reason that the issue of limitation of the case can be raised at any stage of proceedings on admitted facts. It was the duty of the Tribunal as well to have examined this issue on the

facts admitted by the petitioner even if no objections had been filed.

We do not find any merit in the present petition and is accordingly dismissed.

(Rajesh Bindal, J.)

(Aniruddha Roy, J.)

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