

12-04-2021
ct no. 13
Sl.10
sp

**WPA 11725 of 2020
(Through Video Conference)**

Haru Das & Ors.

-Versus-

The State of West Bengal & Ors.

**Mr. P.S. Deb Barman,
Mr. M. Nazar Choudhury,
Mr. Sagar Singh**

....for the petitioners

Mr. Tarun Kumar Das

...for the respondent no. 6

**Mr. Kishore Datta, Id. A.G.,
Mrs. Chaitali Bhattacharya,
Mr. Subhendu Roy Chowdhury**

...for the State respondents

Exception taken by the petitioners to the report of the Secretary, Department of Information and Cultural Affairs, Government of West Bengal is taken on record.

The sum and substance of the writ petition is that the writ petitioners are the employees of “Mahajati Sadan” at Calcutta which is a Grant-in-Aid organization under the Department of Information and Cultural Affairs, Government of West Bengal. The financial and administrative control of the “Mahajati Sadan” vested jointly between the Department of Information and Cultural Affairs, Government of

West Bengal and the Kolkata Municipal Corporation. It is possible that the control of the KMC in the “Mahajati Sadan” may have come down or over the years.

The petitioners in the earlier round of litigation had been promised by the State and the Management of the “Mahajati Sadan” that they will be afforded pension as given to the State Government employees. It is nobody’s case before this Court that the petitioners are employees of the State Government. The Death-cum-Retirement Benefit (DCRB) Rules of 1971 and its subsequent amendments do not directly apply to the petitioners. However, the DCRB Rules of 2009 for the employees of “Mahajati Sadan” has been framed by the Department of Information and Cultural Affairs and the same is yet to be notified in the Gazette.

Counsel for the petitioners submit that the notification in the Gazette should not stand in the way of implementation of the said Rules as is being followed in respect of all autonomous bodies under the State of West Bengal.

Be that as it may, the Director, Ex Officio, Joint Secretary, Department of Information and Cultural Affairs, Government of West Bengal has affirmed an affidavit and has annexed, a report prepared by the Secretary, Department of

Information and Cultural Affairs, Government of West Bengal dated February 8, 2021. In the said report, the Secretary has in some substantial detail addressed the hindrance in the process of giving effect to the aforesaid DCRB Rules for the “Mahajati Sadan”, 2009.

This Court is not inclined to accept that non-publication of Gazette notification would stand in the way of the Pension for the petitioners as similar Rules have been implemented across the State notwithstanding non-publication in the official Gazette. Other issues raised however require to be addressed.

- a) It is submitted by the Learned AG that the Additional Director of Cultural who himself is a Government employee acting as and pension sanctioning authority under Rule 5 (d) of the DCRB Rules, 2009 may not be proper. The Government has proposed that the Additional Director of Cultural should be replaced with the Secretary, “Mahajati Sadan” as the pension disbursing authority. It is ordered that until formal publication of the 2009 DCRB Rules in Gazette, the Secretary, “Mahajati Sadan” shall be deemed the pension sanctioning and disbursing

authority for the employees of
“Mahajati Sadan”.

- b) For the purpose of giving effect to the
DCRB Scheme of 2009, the General
Provident Fund is required to be
created by the Department and draft
rules are required to be framed and
sent to the Finance Department.

It is ordered that the General Provident
Fund be created in terms of the existing Rules of
the State Government in this regard forthwith.
The State may not, in fact, need to frame any
independent Rules for the aforesaid purpose for
the time being.

The Secretary, “Mahajati Sadan” shall
cause accounts to be opened for its employees
for GPF and pension accounts. The CPF
contributions of the employees shall be operated
by a ‘Trust’ to be comprised of the President,
Secretary and a nominee representative of the
employee of the Mahajati Sadan. The
Administrative Department of the “Mahajati
Sadan” shall be responsible for opening of the
said accounts. The contribution of the
employees of the State, which is being
maintained in the form of CPF, would be
converted into the GPF account under control of

the said Trust for the disbursement of pension of the employees.

The Secretary, Department of Information and Cultural Affairs, Government of West Bengal and the Secretary of the “Mahajati Sadan” may also jointly take a decision as to whether the source of funds and/or the intermediary for the aforesaid purpose, in place of the Trust should be the State Government or the LIC or any other similar reputed organization.

Any clarification or lacuna in the implementation of the aforesaid pension to the employees of “Mahajati Sadan”, shall be addressed by reference to the Rules of the State Government particularly, the DCRB Rules of 1971 or any such similar Rules, memorandum or circular.

Let the pension to the employees of the “Mahajati Sadan” be released and the process therefor be commenced and completed within a period of 5 months from the date communication of a copy of this order.

The aforesaid procedure is only suggestive and indicative. The object and purpose is to ensure release of pension to the employees of “Mahajati Sadan”. It shall be deemed only as an ad hoc measure.

The State Government may within the aforesaid period or immediately thereafter, frame appropriate Rules that shall not be in conflict with the existing Rules for pension or DCRB Scheme for State Government employees.

It is however made clear that the employees of “Mahajati Sadan” are, in fact, not employees of the State Government.

The implementation of the aforesaid order shall vest jointly on the Secretary of the “Mahajati Sadan” and the Secretary, Department of Information and Cultural Affairs, Government of West Bengal and the Secretary, Department of Finance, Government of West Bengal who shall coordinate with each other in this regard.

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

There shall be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)