

\$~21 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision:30.07.2021

+ **W.P.(C) 7271/2021**

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Vikram N. Goyal, Adv.

versus

JP PHOGAT

.....Respondent

Through: Mr. A.K. Trivedi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened via video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J.: (ORAL)

CM No.22921/2021

1. Allowed, subject to just exceptions.

W.P.(C) 7271/2021 & CM No.22920/2021 [Application filed on behalf of the petitioners seeking stay on the operation of the impugned order]

2. This is a writ petition directed against the order dated 30.07.2019, passed by the Central Administrative Tribunal, Principal Bench, New Delhi [in short "Tribunal"], in OA No.1012/2018, [in short 'OA'].

2.1. The OA was preferred by the respondent against the communication dated 08.09.2017 issued by the petitioners to the Director, Dattopant Thengadi National Board for Workers Education and Development. Via this communication, the petitioners sought to withdraw their earlier communication dated 17.07.2015.

2.2. The respondent, being aggrieved, approached the Tribunal via the aforementioned OA, which was allowed by the Tribunal vide the impugned order i.e. order dated 30.07.2019.

3. In order to adjudicate upon the writ petition, the following broad facts are required to be noticed.

- i. The Central Board for Workers Education Officers Association [in short “CBWE”], being dissatisfied with the pay scales, on account of the anomaly contained therein, moved the Calcutta Bench of the Tribunal via OA No.566/2007. The said OA was allowed, vide order dated 27.09.2007.
- ii. The petitioners implemented the aforementioned order of the Tribunal, vide Office Memorandum [in short “OM”] dated 28.05.2008. Consequently, revised pay scales were granted to officers of the rank of education officers and above.
- iii. The petitioners, parallelly, assailed the aforementioned order of the Tribunal dated 27.09.2007, passed in OA No. 566/2007, in the Calcutta High Court. This petition was numbered as W.P.C.T. 85/2010. The petitioners were not able to obtain an order staying the operation of the order of the Tribunal dated 27.09.2007.
- iv. While W.P.C.T. 85/2010 was pending adjudication, some retired employees of CBWE moved the High Court for implementation of the OM dated 28.05.2008. This application was numbered as CAN 4818/2013.
- v. The Calcutta High Court, vide order dated 17.12.2013, observed that the retired employees i.e. the applicants in CAN 4818/2013, were entitled to financial benefits in terms of the OM dated 28.05.2008, and

that the same could not be withheld. A direction was issued by the Calcutta High Court to the concerned authority to take appropriate steps towards payment, in terms of OM dated 28.05.2008. Furthermore, a direction was issued that arrears should also be paid to the said applicants.

- vi. Evidently, in 2014, the petitioners attempted to reduce the pay of some employees who were retiring and to recover excess payment from others. This action of the petitioners was challenged in another OA i.e. OA 350/0067/2014, once again, before the Calcutta Bench of the Tribunal. This OA was also allowed by the Calcutta Bench of the Tribunal vide its order dated 04.02.2015.
- vii. The petitioners complied with the order of the Calcutta Bench of the Tribunal dated 04.02.2015 subject to the payees furnishing an undertaking qua entitlement of the petitioners to recover the excess payments, in case they were to succeed in W.P.C.T. 85/2010, which is, pending before the Calcutta High Court. A similar approach was followed in other cases based on communication dated 17.07.2015. Consequently, retirement benefits, including pension, based on revised pay scale, was granted to the concerned persons between July 2015 and January 2017.
- viii. This was sought to be reversed by the petitioners, via the communication dated 08.09.2017, as indicated above.
- ix. The respondent, who was appointed as education officer, on 19.06.1984, and reached the rank of Deputy Director [albeit on ad hoc basis], retired on 28.02.2017. The respondent was impacted by the communication dated 08.09.2017, issued by the petitioners, as his pay

scale, at the time of retirement, as well as of those who were similarly placed, was sought to be altered to their detriment. It is this, which propelled the respondent to move the Tribunal. The Tribunal, vide the impugned order dated 30.07.2019, allowed the OA. The operative directions that the Tribunal issued via the impugned order read as under.

“12. In view of the above, OA is allowed. The respondents are directed to refix the pay of the applicant on the basis of the last basic pay drawn by him and basic pension of Rs. 15435/- and revise his pension and other retiral dues after taking an undertaking from the applicant that the recovery of overpayments will be made in case the decision of the Hon’ble High Court.

4. Mr. Vikram N. Goyal, who appears for the petitioners, says that the impugned order is flawed, as it fails to take into account, the fact that it would be difficult, for the petitioners, to recover excess payments [made during the pendency of the writ petition in the Calcutta High Court] from the respondent, who has retired, and persons similarly circumstanced. The Tribunal ought to have appreciated this difficulty, and thus, sustained the communication dated 08.09.2017, whereby, the petitioners sought to withdraw the earlier communication dated 17.07.2015.

5. Having perused the papers, and after giving due consideration to the background in which the impugned order, was passed by the Tribunal, we are of the opinion that no interference is called for.

5.1. As noticed hereinabove, the petitioners have lost twice, in two separate actions filed before the Calcutta Bench of the Tribunal. In the first instance, OA 566/2007 was allowed by the Calcutta Bench of the Tribunal vide order dated 27.09.2007. The second time around, the Calcutta Bench of

the Tribunal, vide order dated 04.02.2015, allowed OA 350/0067/2014. The petitioners implemented the decision dated 27.09.2007 by issuing an OM dated 28.05.2008. Likewise, the decision rendered on 04.02.2015 was also implemented subject to undertaking being furnished by the employees/retirees that they will repay the excess payment, in case, the petitioners were to succeed in W.P.C.T. 85/2010. This is evident from reading the following extract from the communication dated 17.07.2015 addressed by the Ministry of Labour and Employment, Government of India to the Director, CBWE.

“To,
The Director,
Central Board for Workers Education,
North Ambazari Road, Nagpur-440033.
Sub: Order dated 4.2.2015 passed by CAT, Calcutta in O.A.
No.350/00067 of 2014 in the matter of Shri Sirup Bagchi & Others
retired employees of CBWE in CAT, Calcutta Bench, Kolkatta.

I am directed to refer to CBWE's letter No.C- 18018/34/2014/118 dated 30.06.2015 on the above mentioned subject and to say that Order dated 4.2.2015 passed by the Hon'ble CAT, Calcutta in O.A. No.350/00067 of 2014 in the matter of Shri Sirup Bagchi & Other retired employees of CBWE has been examined in the Ministry, and it has been decided to implement the Order dated 04.02.2015 passed by the CAT, Calcutta subject to the condition that if the appeal filed by CBWE as WPCT No.85 (W) of 2010 in Hon'ble High Court Calcutta challenging the Order of Hon'ble CAT, Calcutta dated 27.09.2007 in OA No.566/2007, which was implemented in the Board vide CBWE's letter dated 28.05.2008, is allowed by appellate court(s) including Supreme Court, then the necessary corrective action to reduce pension, other retiral benefits and recovery of over payments would follow accordingly.

2. The position stated in para 1 of above may specifically be mentioned by the CBWE while issuing the order to implement the

order dated 4.2.2015 in O.A. No. 350/00067 of 2014 of Hon'ble CAT, Calcutta Bench. An undertaking may be obtained from the applicants that the recovery of overpayment will be made in case the decision of the Hon'ble High Court of Calcutta, in W.P. No. 85/2010 is delivered in favour of the petitioners i.e., UOI & Ors.

3. You are also advised that this procedure is to be followed in all such similar cases.

4. This issues with the approval of the competent authority.”

5.2. A bare perusal of the aforesaid letter would show that the petitioners were aware of the fact that OA 350/0067/2014 had been filed by retirees and thus, bearing this fact in mind, consciously extended the same benefit to the retirees as was being accorded to those employees who were in harness.

6. Therefore, we are not inclined to interfere with the impugned order passed by the Tribunal.

6.1. Besides this, Mr. Goyal had fleetingly drawn our attention to an interim order dated 03.12.2019, passed by the Division Bench of Madhya Pradesh High Court, whereby, the operation of the order dated 05.11.2018, passed by the Jabalpur Bench of the Tribunal has been stayed. Because, the complete sets of papers have not been filed, it is not known, as to what, exactly, was portrayed by the petitioners before the Division Bench of the Madhya Pradesh High Court. However, a perusal of an extract of the petition, which is appended on page 155 of the paper book, appears to indicate that OA 566/2007 related to those, who were in service. It appears, what was sought to be conveyed to the Court was that, retirees did not stand on the same footing, as those in service, since excess payments made would be difficult to recover; which is, precisely, the argument that Mr. Goyal has advanced before us.

6.2. As noticed hereinabove, OA 350/0067/2014 concerned retirees. The order passed in the said OA i.e., order dated 04.02.2015, was implemented, as is apparent, upon a bare perusal of the communication dated 17.07.2015.

7. We are of the opinion that, if this writ petition were to be entertained, and the prayer(s) sought for by the petitioners, were to be allowed, it would tantamount to interfering with the order dated 17.12.2013, passed by the Calcutta High Court in W.P.C.T. 85/2010. This Court would then, in effect, by a sidewind, render W.P.C.T. 85/2010, inefficacious. Such a course, in our opinion, is neither wise, nor appropriate; Calcutta High Court being a Court of co-equal jurisdiction.

8. Thus, for the foregoing reasons, the writ petition and the pending application are dismissed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JULY 30, 2021/pmc

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