

01.04.2022
Sl. No.62
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 117 of 2020

Uttam Kumar Khan
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari,
Ms. Tanuja Basak,
Mr. Sk. Imtiaz Uddin
....for the petitioner.

Mr. Arjun Ray Mukherjee,
Ms. Debapriya Mitra,
Mr. Jayjeev Medhi
...for the State.

Mr. Satyajit Talukdar,
Mr. Abhishek Sarkar
....KMDA.

The petitioner joined Calcutta Metropolitan Development Authority (in short “CMDA”) now known as Kolkata Metropolitan Development Authority (in short “KMDA”) on 3rd March, 1987 as Assistant Engineer (Civil) (in short A.E.(Civil). The service of the petitioner was confirmed on 3rd March, 1989. Subsequently, the petitioner was permitted to join West Bengal State Warehousing Corporation (in short “WBSWC”) on 31st December, 1997 on lien. The initial period of lien being extended, the petitioner served WBSWC on lien for a period of two years. The petitioner’s service was absorbed by WBSWC with effect from 10th November, 1997. The petitioner approached this Court by filing a writ petition, being

W.P. 18150 (W) of 2005, inter alia claiming *pro-rata* pension along with connected death-cum-retirement benefits as admissible to him. The said writ petition was finally disposed of by a judgment and order dated 17th May, 2017. The operative portion of the said judgment and order is as follows:

“In the back drop of the above discussion, the Secretary, Urban Development Department, Government of West Bengal being the respondent no.1 is directed to consider the claim of the petitioner for *pro-rata* pension and other admissible retirement benefits upon allowing the adjustments towards his liabilities on evaluation of his record of service with the KMDA in accordance with the rules and, taking notice of the observations as recorded above.

The Chief Executive Officer of the KMDA, the respondent no.2 shall, as considered necessary by the respondent no.1 depute a competent officer conversant with the facts to assist the respondent no.1 in completing the above noted exercise. The respondent no.1 shall also receive necessary cooperation from the petitioner or, through his authorised representatives, as and when called for.

The respondent no.2 shall be entitled to take consequential steps on the basis of the reasoned decision of the respondent no.1. Considering the long pendency of the claim of the writ petitioner, the respondent no.1 shall be also entitled to award a just quantum of interest to the dues, if arrived at, of the petitioner. In the event interest is denied the respondent no.1 shall

record reasons for the same. The petitioner shall be entitled to receive the communication of the reasoned order of the respondent no.1.

It is expected that the above noted exercise shall be carried out not later than twelve weeks from the date of communication of this order.”

Pursuant to the directions given in the said judgement and order dated 17th May, 2017, the Secretary, Department of Urban Development & Municipal Affairs passed a reasoned order on 18th July, 2017. A copy whereof was forwarded to the petitioner by a letter dated 10th August, 2017 written by the Special Secretary to the Government of West Bengal, Department of Urban Development & Municipal Affairs. The operative portion of the said order dated 18th July, 2017 is as follow:

“In view of the above facts and circumstances and considering the extant Govt. orders, statutory rules, regulations etc., it may be stated that the petitioner, Sri Khan may be entitled to get the pro-rata pension from KMDA for the period of service rendered in KMDA (the then CMDA) with effect from 03.03.1989 to 31.12.1999 subject to the extension of benefit by condoning the provision laid in sub-rule (xi)(3) of Rule 189(A) of WBS (DCRB) Rules, 1971 by the Finance Department, Government of West Bengal.”

The petitioner has approached this Court as nothing further happened after passing of the order dated 18th July, 2017. The petitioner says that he is entitled to the *pro-rata* pension from KMDA for the period between 3rd March, 1989 and 31st December, 1999, in terms of the order dated 18th July, 2017 passed by the Secretary to the Government of West Bengal, Department of Urban Development & Municipal Affairs.

On behalf of the State, it is submitted that in view of the provisions of Rule 189A(xi)(3) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (hereinafter referred to as the 1971 Rules) which is applicable in view of the Regulation 52(2) of KMDA Death-cum-Retirement Benefit Regulation, 1988, the Finance Department, Government of West Bengal is not empowered to condone the provisions laid down in Rule 189 A (xi)(3) as required to be done in terms of the order dated 18th July, 2017 for granting *pro-rata* pension to the petitioner.

After hearing the parties and considering the materials on record, I find that under Rule 189 A (i) of the 1971 Rules, the petitioner is entitled to *pro-rata* pension and gratuity based on the length of his qualifying service. In the instant case the petitioner

served KMDA till 9th November, 1997. By that time the 1988 Regulation of KMDA had come into operation. The qualifying service therefor has to be considered in terms of Regulation of 1988 as applicable to KMDA. The only embargo, which was noted by the Secretary, Department of Urban Development & Municipal Affairs in his order dated 18th July, 2017 was the provisions of Rule 189A(xi)(3), which provides as follows:

“Cases of resignation from the undertaking before due date of superannuation will for the purpose of these rules be treated as resignation from Government service, entailing forfeiture of the earlier service under Government and loss of the pensionary benefits under the rules.”

This provision was taken into consideration because the petitioner resigned from the service of WBSWC with effect from 15th November, 2011, that is, prior to the due date of superannuation.

The petitioner between 3rd March, 1987 and 9th November, 1997 served KMDA i.e., for 10 years and nine months. The petitioner served WBSWC between 10th November, 1997 and 15th November, 2011 i.e., more than 14 years. The total period in the two organizations is more than 24 years and nine months.

Under the regulation 15(1) (b) of the 1988 Regulation, a person serving more than ten years in

KMDA is reckonable for pension. Under regulation 21(b) of the 1988 Regulation, a person having served KMDA for more than 10 years but less than 30 years is entitled to proportionate pension. The petitioner having served KMDA more than 10 years is, therefor, entitled to proportionate pension.

The issue of forfeiture of past service on resignation as provided in Rule 33 of the 1971 Rules which is similar to the provisions of forfeiture of past service as in Rule 189A(xi)(3) has been considered by a Division Bench of this Court in the judgment reported in **(2003) 2 CHN 354** (Dr. Sajal Kanti Chakraborty Vs. State of West Bengal & Ors.). In the said judgment, the Division Bench held that the petitioner in that case, being a Veterinary Assistant under West Bengal Veterinary Services, has qualified for the retiring pension upon having served the department for 25 years even though he resigned before serving for 30 years after considering the provisions of rule 59 of the 1971 Rules.

In the instant case, the fact that petitioner served KMDA between 3rd March, 1989 and 31st December, 1999, is not in dispute. The petitioner, therefor, has served KMDA for over 10 years. The petitioner has the qualifying service tenure to receive the *pro-rata* pension. Although the petitioner does

not come within the specified services included in Rule 59, yet applying the ratio laid down in Dr. Sajal Kanti Chakraborty (supra) an exception in case of the petitioner can be culled out by applying the provisions of regulations 15(1)(b) and 21 (b) of the KMDA Regulation, 1988. I am, therefor, inclined to extend the benefit of the *pro-rata* pension for the period between 3rd March, 1989 and 31st December, 1999 to the petitioner without any further act or approval by the Department of Finance, Government of West Bengal, as has been held in the order of the Secretary to the Government of West Bengal, Department of Urban Development & Municipal Affairs dated 18th July, 2017. The order dated 18th July, 2017 passed by the Secretary to the Government of West Bengal, Department of Urban Development & Municipal Affairs is thus modified to the extent as if the portion recommending for condonation of delay by the Finance Department, Government of West Bengal did not exist in the same.

KMDA is directed to pay the *pro-rata* and/or proportionate pension to the petitioner for the period between 3rd March, 1989 and 31st December, 1999 as computed on the basis of 1988 Regulation within a period of four months from date.

Parties are directed to act on the basis of a server copy of this order without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition save those admitted in the reports are deemed to have not been admitted.

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

(Arindam Mukherjee, J.)