

14.11.2022
Sl. No.13(DL)
srm

W.P.A. No. 5100 of 2022
Promod Kumar Sarkar
Versus
State of West Bengal & Ors.

Mr. Ujjal Roy,
Mr. Diptyendu Kumar Pal,
Mrs. Pramita Maity

....for the Petitioner.

Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly

...for the State-respondents.

Affidavit-of-service is taken on record.

The writ petition has become infructuous by the subsequent action of the District Magistrate, Malda. The disciplinary authority/District Magistrate has withdrawn the order of suspension of the petitioner with effect from April 28, 2022. Such order of suspension is under challenge in this writ petition. It has been stated that the arrear payment will be settled after due consideration of the proceedings and findings and his payment will be fixed as per the extant rules.

The District Panchayat and Rural Development Officer, Malda has also intimated that considering the case that the petitioner was to superannuate on April 30, 2022 and he would be deprived of his pension, gratuity and

other benefits, the authority had decided to withdraw the order of suspension.

The learned Advocate for the petitioner submits that pursuant to the withdrawal of the order of suspension, the petitioner joined his duty and thereafter retired after one day.

It is clear that once the order of suspension was withdrawn and the petitioner was allowed to join his duty and retire without the initiation of any disciplinary proceeding, the authorities cannot initiate any disciplinary proceeding after the retirement of the petitioner. However, the Employees' Death-cum-Retirement Benefits Scheme provides that the pension may be withheld in future, in case of conviction and misconduct. In this case, the petitioner is an accused in a criminal case but has not yet been convicted.

This Court does not find any reason as to why the authority shall not process his retirement benefits and make necessary payments in accordance with law.

With regard to the claim of the petitioner for arrear salary pursuant to the withdrawal of the order of suspension, this Court is of the view that the authority shall decide how to treat the period under suspension and pass necessary orders after completion of the pending

criminal investigation/proceeding against the petitioner. However, as the petitioner has not worked during the period of suspension, full back wages cannot be directed to be paid. 50% of the salary, which was granted to the petitioner as subsistence allowance, appears to be adequate, until finalization of the issue by the authority. The retirement benefits of the petitioner shall be decided on the last pay which the petitioner would draw as a regular employee after the revocation of the order of suspension.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)