

11 25.04.22

Ct. No. 04

Akd

F.M.A. 226 of 2022

CAN 1 of 2021

Gopal Chandra Patra

Vs.

The State of West Bengal & Ors.

Mr. Saptangshu Basu,

Mr. Kaustav Mishra,

Mr. Uttam Kumar Bhattacharyya.

... for the appellant.

Mr. Saibal Acharyya,

Mr. Sujit Bhunia.

... for the respondent

nos. 6, 8, 9 and 11.

The instant appeal arises from an order dated 12th April, 2021 passed in WPA 25227 of 2017, wherein the Single Bench directed the audit to be completed within a specified time and simultaneously restrained the respondents from releasing the pensionary or terminal benefits.

Undoubtedly the matter is still pending before the Single Bench and no final decision has yet been taken in the said writ petition. The interim order is sought to be challenged in the instant appeal at the instance of the writ petitioner feeling aggrieved by the later portion of the order by which the authorities were refrained from releasing the pensionary or terminal benefits till the time the audit is complete.

Both the Counsels appearing for the respective parties have uniformly submitted that the audit has already been completed and the affidavits have been filed before the Single Bench.

There is no impediment on the part of the Single Bench to conclude the hearing and decide the writ petition finally. Our consideration is restricted to the later portion of the order where the restraint was imposed not to disburse the pensionary or terminal benefits. There is a serious allegation against the writ

petitioner pertaining to embezzlement of fund at his disposal while he was discharging duty as Headmaster.

Such allegation is required to be proved as we have given to understand that after demitting the office by the writ petitioner and handing over of charges, such alleged information was unearthed and on the basis thereof a First Information Report has been lodged. We are further informed that charge sheet has already been submitted, but till date charges have not been framed.

Be that as it may, our attention is drawn to paragraph 19(5) of the DCRB Scheme, 1981 pertaining to release of pension and terminal benefits in a situation where the judicial or departmental proceeding was instituted or continued.

The learned Advocate for the school authorities fairly submits that the said provision does not put an absolute fetter in non-disbursement of the pensionary or terminal benefits, but the provisional pension not exceeding the maximum pension as admissible on the basis of qualifying service up to the date of retirement may be released.

Such proposition has not been disputed, but Mr. Basu, learned Senior Counsel appearing on behalf of the appellant submits that the aforesaid provision has its restricted applicability and it is only when the judicial or departmental proceeding was initiated before attaining of superannuation.

We do not delve to go deep into the aforesaid aspect, as the matter is still pending before the Single Bench and a final decision thereupon is awaiting.

Since there is no absolute fetter even in a situation where a judicial proceeding is instituted or departmental proceeding is continued to release the

provisional pension to the retired employee, we, therefore, modify the interim order to the extent that the concerned authorities shall revisit the Pension Payment Order and ascertain the provisional pension in terms of the relevant provisions as appearing in paragraph 19(5) of the DCRB Scheme, 1981 within two weeks from date and shall ensure that the same is paid to the appellant/writ petitioner immediately.

With such modification the appeal is disposed of. The connected application stands disposed of accordingly.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)