

23.09.2022

WPST 81 of 2022

Court : 04
Item : 40
Matter : WPST
Status : DO
Transcriber: nandy

Bhajahari Mallick
Vs.
The State of West Bengal & Ors.

Mr. Chinmoy Pual, Advocate
Mr. Archan Dutta, Advocate

.....for the Petitioner

Mr. Tapan Kumar Mukherjee, Learned AGP
Ms. Tuli Sinha, Advocate

.....for the State

Mr. Suman Basu, Advocate

.....for the Respondent No. 4

The instant writ-petition is filed assailing the order of the West Bengal Administrative Tribunal dated 27.04.2022 passed in OA 643 of 2018 whereby and whereunder the tribunal application was disposed of directing the Directorate of Health Services, Government of West Bengal, Kolkata to take decision and pass a reasoned order regarding regularization of leave of the applicant and consequently for payment of pension and other superannuation benefits, within eight weeks from the date of presentation of the copy of the order after giving an opportunity of hearing to the applicant and upon perusal of the records including memo dated 10.03.2016 regarding regularization of payment of pension issued by the Surgeon Superintendent, SSKM Hospital, Kolkata.

The grievance of the writ-petitioner is that in view of the medical incapacitation and various ailments which he was subjected to, there was a considerable period of absence in his service but after the Doctor gave an opinion that he is fit to join and render services, he intended to join the service in 1991 but was denied to join the duty and being aggrieved he filed an application before the Tribunal and thereafter a writ application before this Court. This

Court by order dated 08.12.2016 passed in WPST 198 of 2016 permitted the petitioner to withdraw the petition and approach the SSKM Hospital Authorities in terms of the order dated 01.09.2016 passed by the West Bengal Administrative Tribunal. The Division Bench further opined that if the writ-petitioner approaches the Authorities, the Authorities may decide his application as early as possible.

Pursuant to the leave granted by this Court, approach was made to the concerned authority, and it is not in dispute that the petitioner was permitted to join the service and attained superannuation on and from 31.12.2016

Our attention is drawn to an order dated 31.12.2016 passed by the Medical Superintendent-cum-Vice Principal, SSKM Hospital where the petitioner was found within the purview of Pensionary Benefit with effect from 01.01.2017 as his date of joining in service was 11.04.1978. Since the pensionary benefit was not disbursed, the petitioner approached the authority and ultimately to the Tribunal raising such grievance. It appears that the authority have found the petitioner entitled to pensionary benefits but later on it was found that unless the regularization of the leave for the period of absence is done, the retiral benefits cannot be ascertained.

The Tribunal after considering the entire gamut of the disputes directed the authorities to take a decision on the regularization of leave.

Since the period was provided by the authority specifying that regularization of the leave is required, it embolden the writ-petitioner to contend before us that the moment the authority refused the petitioner to join in the year 1991, such stand is farcical.

We find that the Tribunal after taking into consideration the above aspect has directed the authority to take a decision thereupon after affording an opportunity of hearing to the petitioner. Therefore, there is no justification in the apprehension shown by the writ-petitioner that the pleas taken herein shall not be considered. The authority shall consider all the pleas available to the petitioner and shall render its finding thereupon. The authority cannot shirk its responsibility in addressing such pleas if taken before it. Therefore, we do not find that any interference to the impugned order is required.

We thus do not find that there is an infirmity and/or illegality in the order.

Accordingly, the writ-petition being **WPST 81 of 2022** is **disposed of**.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

