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Ct. No. 04

Akd

WP.ST. 125 of 2022

Uday Kumar Pore

Vs.

The State of West Bengal & Ors.

Mr. Pradip Kumar Mondal,

Mr. Soumitra Chatterjee.

... for the petitioner.

Mr. Tapan Kumar Mukherjee,

Ms. Debdooti Dutta.

... for the State.

Both the authorities and the Tribunal have misinterpreted and misconstrued the relevant provisions in rejecting the claim of the petitioner, which on a meaningful reading conveys a different meaning than what has been accepted and assigned in the orders passed by the aforesaid authorities.

The petitioner was appointed to a regular/permanent post and attained superannuation with effect from 31st January, 2022. Since he rendered the services for a period of 9 years 9 months and 12 days, which is short of 10 years, he applied for the condonation of deficiency in service under Rule 36 of the West Bengal Services (Death cum Retirement Benefit) Rules 1971.

It is not in dispute that in order to be entitled to pension the minimum qualifying service to be rendered by such Government servant is 10 years, which is not disputed by the respective Counsels. The question involved in the aforesaid context is whether the power of the Government to condone the deficiency in service is unbridled or restricted or controlled by the note appended thereto.

The authority before whom the said representation was made applied the provisions contained in Rule 36 thereof, more particularly the note appended thereto and arrived at the conclusion

that the petitioner does not fulfil the conditions mentioned therein and, therefore, not entitled to have the privilege of condonation of deficiency in service.

The said Rule 36 is reproduced hereunder:

“36. *Power of Government to condone deficiency in service,-- Upon any condition which it may think fit to impose, Government may condone a deficiency of six months in the qualifying service of a Government servant.*

Note -- *The deficiency should not be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity or family pension. In other cases power should be restricted to Government servant drawing pay not exceeding Rs.425/- per month at the time of retirement on invalid or compensation pension.”*

The order of the authority was challenged by the petitioner before the West Bengal Administrative Tribunal in OA 936 of 2021 and by the impugned order the Tribunal without recording its independent findings on the interpretation assigned by the authority on the provisions of Rule 36 thereof proceeded to dismiss the matter holding that no case is made out by the petitioner for such condonation.

Initially we ventured to go into the legal point whether the note appended below the substantive provision can be looked into even when it over-reach or override the enabling provision. After hearing the parties, we find that it would be a mere academic to go to the nuances of law in this regard and, therefore, we decided to proceed on the basis of the language employed in the aforesaid provision and the interpretation to be given to it.

Admittedly there is a shortfall of 2 months and 18 days in the qualifying service required for Government

employee for his entitlement to pension under the aforesaid Rules. Rule 36 bestowed power upon the Government to condone the deficiency of six months in qualifying service of the Government without putting any reservation, restriction or condition so far as the enabling provision is concerned. The note appended below the aforesaid Rule has played a pivotal role in the decision of the authority as well as the Tribunal, who, in our opinion, have misinterpreted or misconstrued the same.

The note creates a bridled and put a condition while exercising the discretion in relation to condonation of deficiency in service. Even if we consider that by virtue of the note the exercise of power conferred under the enabling provision can be abridged or controlled to the extent indicated therein, yet we do not find that the manner in which the language used therein can be accepted or substantiated from the stand of the authority and the Tribunal.

It is manifestly clear from the said note that the Government may refuse to condone the deficiency to make up the minimum qualifying service for the purpose of death gratuity or family pension. The aforesaid first sentence has to be read in the context of the facts and should not be applied in an abstract or isolated manner. By the first sentence the power of the Government to condone the deficiency in service is restricted to death gratuity or family pension and, therefore, any other claim apart from the same cannot be perceived to have been included therein.

In the instant case the petitioner claimed a superannuation pension, which is distinct and different from the family pension. The next sentence incorporated in the said note is relatable to a situation

where the Government may refuse to exercise the discretion of condonation of deficiency in service, if the Government servant was drawing a pay exceeding Rs. 425/- per month at the time of retirement on invalid or compensation pension. The second sentence, in our opinion, is restricted to a case of an invalid or compensation pension, which is distinct and different from a superannuation pension in view of the categories of pensions enumerated in Rule 37 thereof. It would be relevant to quote Rule 37, which runs thus:

“37. Classification of pensions – Pensions are divided into the following four classes, namely:

(a) compensation pension;

(b) invalid pension;

(c) superannuation pension; and

(d) retiring pension.”

The compensation pension has been defined in Rule 38 to mean that if an officer is selected for discharge owing to the abolition of permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, and the option was also given to take compensation pension or gratuity to the service, which he rendered or to accept another appointment of transfer to another establishment even on a lower pay and the continuity in service would not be disturbed. Admittedly it is not a case where the post, which the petitioner is holding, was abolished subsequently and option was given to him to accept the compensation pension.

The concept of invalid pension can be seen from Rule 48 of the said Rules, which means that such invalid pension is awarded on a retirement of a public

service to an officer who by bodily or mentally infirmity is permanently incapacitated for public service.

It is no longer *res-integra* that if a specification and/or distinction and/or clarification has been made to the words used in the statutory provision, wherever such words or expressions appears in the same statute, the meaning assigned therein to be given and the external aid or the grammatical meaning thereof should be guarded against. In view of the explanatory provisions assigning the eventualities applicable to the compensation pension and the invalid pension, the note appended to Rule 36 must be read in juxtaposition with the aforesaid Rules and the eventualities have to be seen before the journey is embarked on the interpretation thereof.

The moment the pensions have been categorized in four categories and each category has been explained in the subsequent provisions of the statutory Rules, the category mentioned in the note appended to Rule 36 must be interpreted in the light of the same and not in the manner as has been done by the authority as well as the Tribunal.

Admittedly the case of the petitioner neither comes within the ambit of the compensation pension nor invalid pension but under the superannuation pension and, therefore, the restrictions imposed in the note appended to Rule 36 cannot be applied to such situation when the legislatures have consciously excluded such pension beyond the peripheral thereof.

In view of the above, we find that the order of the authority as well as the Tribunal suffers from severe irregularities and/or infirmities and cannot be sustained in the eye of law and the same are hereby quashed and set aside; meaning thereby not only the

reasoned order dated 16th January, 2021 passed by the Secretary, Irrigation & Waterways Department is set aside, but also the impugned judgement and order dated 22nd September, 2022 passed in OA 936 of 2021 by the West Bengal Administrative Tribunal is set aside.

Since the discretion is vested upon the Government to condone the deficiency in service, we do not think that such discretion should be usurped by us and pass an order and, therefore, remit the matter to the Secretary, Irrigation & Waterways Department to reconsider the representation / application of the petitioner in the light of the observations made hereinabove within four weeks from the date of the communication of this order and by recording proper reasons.

The writ petition is thus allowed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)