

ORDER SHEET

WPO 680 of 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

MAHASIN MALLICK
VS.
THE STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 27th June, 2022

Mr. B. P. Subba, Ms. Nibedita Chakraborty, Ms. Barshana
Shrestha, Advocates for the petitioner.
Mr. Tapan Kr. Mukherjee, Sr. Adv., Mr. Pranab Halder, Advocate for
respondent nos.2, 3, 4, 5 and 6.
Mr. Susanta Pal, Ms. Ananya Neogi, Advocates for the State.

The Court : The petitioner was appointed as an Accounts Assistant in the West Bengal Labour Welfare Board (hereinafter referred to as 'the said Board'). The petitioner got promotion from time to time and ultimately retired as the Deputy Commissioner of the said Board on 4th April, 2013. The constitution and functioning of the Board is under the provision of West Bengal Labour Welfare Fund Act, 1974 (hereinafter referred to as 'the said Act') and the West Bengal Labour Welfare Fund Rules, 1976 (hereinafter referred to as 'the said Rules'). Till now there is no rules governing the method of recruitment, pay and allowances and other conditions of service of the members or the staff of the said Board. Section 18 of the said Act provides that until the regulations are so made in this regard, the conditions

of service of the employees and staff of the said Board shall be governed by the rules made by the State Government in this behalf. The petitioner on his retirement, in absence of any rules concerning his pay and allowance and condition of services becomes governed by the provisions of the West Bengal Services (Death cum Retirement Benefit) Rules, 1971 (hereinafter referred to as DCRB Rules) for getting his retiral benefits and pension.

The petitioner has been sanctioned an ad hoc pension of Rs.13,310/- by an order dated 4th April, 2013. Pending finalisation of the Death cum Retirement Benefit Rules for the Board's employees, the petitioner has been receiving the ad hoc pension. The petitioner had immediately after retirement expressed his intention to commute the permissible maximum part of the amount of his pension. The commutation has not been permitted by the Board for reasons unknown though the same was made known to the Board by the petitioner as far back on 23rd August, 2013. Several representations have been made therefor yet the issue of commutation which has remained unresolved, as a consequence whereof this writ petition has been filed.

The said Board in its report in form of an affidavit has not spelt out any specific reason for disallowing commutation of the maximum amount of pension as sought for by the petitioner but have admitted that the regulations have not yet been finalised. The Board in its affidavit has cited the embargo under Rule 27 of the said Rules to say that the Board cannot make expenses of more than 50% of its income to suggest financial implication to allow commutation. The Board says that in the year 2021-

2022 a sum of Rs. 4,12,91,827/- was the annual income in the Labour Welfare Fund (hereinafter referred to as the said Fund) constituted under the said Act and tries to suggest that in absence of DCRB Rules for the employees and staff of the said Board and for the huge expenses, the commutation of pension as sought for by the petitioner is not permissible.

After going through the object of the said Act it appears that the said Fund was created for permitting activities connected with the welfare of labour and for matters connected therewith. The contribution to the said fund has been also well-defined under the said Act and the Rules framed thereunder. The State Government has a significant role under the said Act and the Rules framed thereunder. Apart from control over the financial aspect of the Board, the State Government is also a contributory for the purpose of creating the said Fund. The State Government is also the authority to grant financial clearance to the Board for meeting its expenses. The affidavit filed by the State only suggests that proper approval and sanction was not taken by the Board from time to time. It is unfortunate to notice that although the State Government has the power and authority to call for records under the provision of Section 19 of the said Act and to supersede the Board under the provision of Section 23 thereof has taken no step against the Board if in its view the Board has acted without its sanction and approval. In the event the Board does not function following the guidelines of the State, the State Government could have called for records or could have superseded the Board but nothing of that sort has been done. This inaction on the part of the State does not justify the stand taken by it

in its affidavit. It is now well settled that pension and retiral benefits of an employee is not a bounty but is an acquired right. Neither the State nor the Board constituted by the State as per section 4 of the said Act can deprive an employee of his retiral benefits and pension. In the instant case due to the regulations having not been promulgated, the employees and staff of the Board are literally at the mercy of the State Government and the Board. The petitioner after serving for 37 years is receiving ad hoc pension of 50% of his last drawn salary. This is also continuing ever since 2013. The inaction on the part of the Board and the State in the instant case is a glaring example of a self created impasse. It appears on a side by side comparison of the two affidavits filed by the Board and the State that one is showing the other but the end result is the suffering of the employees and staff of the Board. The DCRB Rules, 1971 which is applicable in terms of the provision of Section 18 of the 1974 Act in respect of the employees and staff of the Board till the rules are finalised as to the conditions of services of an employee or staff of the Board permits full pension under Rule 58 thereof on having the qualifying service is 30 years. Superannuation pension is provided under Rule 57 of the said DCRB Rules. Despite all these specific provisions and without the 1971 Rules have been made applicable by virtue of Section 18 of the 1974 Act neither the Board nor the State Government has provided the employees and staff of the Board with due and proper pension. This is not only shocking but alarming. However, in this writ petition I am concerned with the prayer for commutation. DCRB Rules, 1971 permit an employee to commute his/her pension. By a memorandum dated 25th February, 2009 issued by the Government of West Bengal Finance Department Pension

Branch the rate of commutation permitted to a government employee to get a lumpsum payment is up to 40% of his pension.

The petitioner retired from services on 4th April, 2013 and is squarely covered by the said memorandum in view of the provisions of Section 18 of the 1974 Act, inasmuch as no Rules for recruitment, pay and allowance and service condition of an employee and the staff of the said Board has yet been finalised.

In the aforesaid facts and circumstances, the petitioner is permitted to commute 40% of his total pension as he has already expressed his intention to commute the maximum permissible amount in his letter dated 23rd August, 2013 and reminders thereto. The respondents which includes the State respondent as also the Board and its officers shall take necessary steps to permit the commutation of 40% of the pension by the petitioner and shall pay the lumpsum amount for such commutation within a period of three months from the date of this order.

Since the respondents are represented, they are not entitled to any further notice. However, as and by way of abundant caution, the petitioner shall serve a copy of this order downloaded from the official website of this Court upon the respondents within a period of seven days from date.

Nothing further remains to be adjudicated. The writ petition is, accordingly, disposed of.

Save and except what has been admitted in the reports filed by the respondents in form of affidavit, other allegations are deemed to have not

been admitted by the said respondents since I had not called for a detailed affidavit.

(ARINDAM MUKHERJEE, J.)

pa/sb