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ORDER SHEET
WPO No.2178 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DILIP KUMAR DAS
Vs.
THE STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 7th June, 2022.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Ms. Amrita De, Adv.
..for the Petitioner.

Mr. Ranajit Chatterjee, Adv.
Mr. Arijit Dey, Adv.
...for KMC.

The Court:-The petitioner is a retired employee of the Kolkata Municipal Corporation. He was arrested on 24th February, 2012 in connection with an F.I.R. lodged under Sections 147 /148 /149 /448 /326 /364 /354 /504 IPC and Section 9(b) I.E. Act in connection with Pingla P.S. Case no. 25/2012. After being release on bail, the petitioner was permitted to rejoin service on 11th May, 2012 and he remained in service till he attained his normal age of superannuation on 31st July, 2021.

The grievance of the petitioner is that he has not been paid his full terminal dues after his superannuation allegedly as a criminal proceeding was pending against him. The employer resorted to Regulation 43 of the Death Cum Retirement Benefit Regulations, 1982 and disbursed 2/3rd of the pension.

The petitioner submits that the criminal proceeding against him is still pending. There is no possibility of the said proceeding being disposed of in the immediate future. The employer did not initiate any departmental or disciplinary proceeding against the petitioner during his entire period of service. The petitioner was promoted to the next level during the pendency of the criminal proceeding against him.

The petitioner prays for releasing his full terminal benefits.

Learned advocate representing the Kolkata Municipal Corporation relies upon Regulation 43 of the Death Cum Retirement Benefit Regulations, 1982. It has been submitted that as there is an allegation of moral turpitude against the petitioner and a criminal proceeding is pending, accordingly in terms of the aforesaid regulation the pensionary benefit is to be restricted only to 2/3rd of the admissible pension.

It has further been submitted that the provision of the DCRB is not under challenge before this Court and the Court ought not to add or interpret the aforesaid provision in any other manner than is provided in the regulation itself.

I have heard submissions made on behalf of both the parties. Admittedly in the present case the petitioner was arrested in the year 2012 and said criminal proceeding is pending till date. The petitioner has submitted that there is hardly any possibility of the matter being disposed of immediately in the near future.

The employer thought it fit to permit the petitioner to rejoin service after he was enlarged on bail. From the period from 2012 till the date of superannuation of the petitioner on 31st July, 2021 the employer never

initiated any departmental or disciplinary proceeding against him. On the contrary, the petitioner was permitted to be promoted and he served in his promotional post.

The regulation which the employer has relied upon mentions about pendency of criminal proceeding involving moral turpitude. It is to be noted that there is no allegation by the employer with regard to moral turpitude of the petitioner. The criminal proceeding which is pending is in no way connected or related with the service of the petitioner. Accordingly, provision of Regulation 43 has to be interpreted in such a manner that the criminal proceeding referred to therein has to be restricted to his service and not any other criminal proceeding which is pending against the employee.

The offence in which the petitioner is implicated has no nexus with his service and no pecuniary loss has been caused to the employer.

The aforesaid issue has been decided by this Court in the matter of Anadi Prasad Mahato vs. State of West Bengal reported in 2014 (2) CHN (CAL) 103 and in the matter of Gunamay Mahato vs. State of West Bengal reported in 2015 SCC online Cal 7503.

In view of the above, the instant writ petition is disposed of by directing the Chief Manager, SR & AC being respondent no.5 herein to take steps for disbursing the balance arrear pension of the petitioner at the earliest but positively within a period of eight weeks from the date of communication of this order.

The writ petition is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(AMRITA SINHA, J.)

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