

S/L 68
02.05.2023
Court. No. 12
Sourav

WPA 1259 of 2019

Sri Subrata Kumar Mondal
Vs.
The Damodar Valley Corporation & Ors.

Mr. Raj Kumar Gupta

...for the petitioner.

Mr. Dinabandhu Dan
Mr. Dipankar Ghosh

...for DVC.

1. Both the writ petitioner and the respondent nos. 1 to 5 i.e., the Damodar Valley Corporation and its officials are represented by their respective learned advocates.
2. The affidavit-in-reply as filed by the writ petitioner be taken on record.
3. Heard learned advocates for the parties in support of and against the writ petition.
4. The instant writ petition is now taken up for passing appropriate order.
5. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioner has prayed for quashing of the impugned order dated 10.09.2018 as passed by respondent no. 4 with a further prayer to issue a writ of mandamus commanding the present respondents to count the past service of the writ petitioner in the Directorate of Commercial Taxes, West Bengal in his present service with the respondent no. 1 authority in the prevailing pension

scheme with all other benefits including gratuity and admissible interest.

6. By the impugned order dated 10.09.2018, the respondent no. 3 being the Deputy Director- H.R. of the respondent no. 1 authority found that the present writ petitioner was a member of GPF in Directorate of Commercial Taxes and it has also been found that since at present the present writ petitioner is a member of National Pension Scheme (NPS, for short) in Damodar Valley Corporation (DVC, for short) and he has withdrawn his GPF and since the Government of West Bengal has stated in its memo dated 16.07.2018 that he is not entitled to pro-rata pension, the writ petitioner would draw pension as per NPS only. Since the prayer of the writ petitioner for counting the past service as Directorate of Commercial Taxes in the present pension scheme of the respondent no. 1 authority has not been considered favourably, the writ petitioner felt aggrieved and, thus, filed the instant writ petition.
7. In support of the instant writ petition, Mr. Gupta, learned advocate for the writ petitioner at the very outset draws attention of this Court to the copy of the impugned order which has been annexed with the mark P-15. Attention of this Court is also drawn to the copy of the letter dated 07.02.1986 as issued by the Government of India in favour of the Chief Secretary, Government of West Bengal regarding counting of service for the purpose of pension of

employees of Central Government and Central Autonomous Bodies which has been annexed with the mark R-1 in the affidavit-in-reply as filed by the writ petitioner and to a photocopy of the memorandum no. 615-F (Pen) dated 30.06.2000 as issued by Pension Branch, Finance Department, Government of West Bengal. It is argued by Mr. Gupta that from the letter dated 07.02.1986 and the notification dated 30.06.2000 (as has been handed over to this Court during hearing), it would reveal that there lies a rule of counting past services under the State Government for the purpose of pensionary benefit. It is thus argued by Mr. Gupta, that while passing the impugned order the respondent no. 3 has failed to visualize the true implication of the said letter or the notification which is why he has passed a wrong order which is not sustainable in the eye of law.

8. *Per contra*, Mr. Dan, learned advocate for the respondent authorities at the very outset draws attention of this Court to the writ petition. It is contended by Mr. Dan that from the writ petition, it is clear that the present writ petitioner was in the service of the Government of West Bengal with effect from 23.07.1999 till 16.11.2005 and, thereafter, he joined in the office of the respondent no. 1 authority on 10.10.2006 and he is still continuing his present employment. Drawing attention to the Annexure R-2 of the affidavit-in-opposition being a copy of the

letter dated 16.07.2018 as written by Deputy Secretary (Technical), Finance Department, Government of West Bengal addressed to the Assistant Director (Personnel), DVC, it is argued by Mr. Dan that from the copy of the said letter dated 16.07.2018, it has been made clear by the Finance Department, Government of West Bengal that since the service of the present writ petitioner is less than 10 years, he is not entitled to pro-rata pension though he is entitled to get pro-rata death cum retirement gratuity.

9. Drawing further attention to the Annexure R-4 of the affidavit-in-opposition, it is contended that in the office of the respondent no. 1 with effect from 01.01.2004 new pension scheme of DVC (NPS) has been implemented. It is further submitted by Mr. Dan that since the writ petitioner has joined the office of the respondent no. 1 on 10.10.2006, the writ petitioner has automatically come under the purview of NPS. It is thus submitted that in view of the reply given by the Department of Finance, Government of West Bengal and in view of the two different Pension Schemes, there cannot be any scope to count the past service of the writ petitioners in the Government of West Bengal in the prevailing scheme of DVC i.e. NPS.
10. On perusal of the entire materials as placed before this Court and after hearing the learned advocate for both the parties, it appears to this Court that the

Finance Department, Government of West Bengal is perfectly justified in holding that since the service tenure of the present writ petitioner with the Government of West Bengal is less than 10 years, he is not entitled to pro-rata pension. It further appears to this Court since the pension scheme as was prevailing in the Government of West Bengal while the writ petitioner was in serving of Government of West Bengal and the scheme of pension as was prevailing at the time of joining of the office of the respondent no. 1 by the present writ petitioner is quite different, there is hardly any scope to count the past service of the petitioner in the Government of west Bengal with the service of the respondent no. 1 authority.

11. In considered view of this Court, the letter dated 07.02.1986 and the notification dated 30.06.2000 are of little significance since those letter and/or notification were issued in a completely different perspective and in considered view of this Court those notification and/or letter have no connection and/or application in the facts and circumstances of present *lis*.
12. In view of the discussion made hereinabove, this Court considers that the impugned order dated 10.09.2018 as passed by the respondent no. 3 is perfectly justified and in accordance with law for which no interference of this Court is required.

13. With the aforementioned observation, the instant writ petition being **WPA 1259 of 2019** is dismissed on contest.
14. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)