IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 1425 of 2019

Reserved on : 09.06.2023
Pronounced on: 14.07.2023

Santwana Chowdhury
...Petitioner

-Vs-

The State of West Bengal & Ors. ...Respondent

Present:-

Mr. Dyutiman Banerjee
... for the Petitioner

Mr. Sharanya Chatterjee
....for the Respondent Nos. 2 to 5.

Mr. Susanta Pal
Mr. Prabir Ray
...For the State.

Rajarshi Bharadwaj, J:

1. The instant writ petition has been filed before this Hon'ble Court contesting the failure of the respondent authorities in disbursing the rightful retiral benefits to the petitioner.

2. The facts in brief are that the petitioner has been rendering service to the Kalyani Spinning Mills Limited herein the respondent no.2 since 2006 as a personal assistant to the Managing Director herein respondent no.4 under the job production contract (hereinafter referred to as "JPC") scheme of the company. The respondent no.2 was included as a Government of West Bengal

Undertaking vide resolution no. 8071-F (P) dated 13th July, 2017 by the Governor of West Bengal in terms of reference to the 6th Pay Commission, owing to which the employees working in respondent no.2 were entitled to similar perks as that of any other government establishments/organizations.

3. The Government of West Bengal issued a Memorandum being no. 9008-F(P) dated 16th September, 2011 pertaining to receiving appropriate emoluments and certain terminal benefits subject to fulfillment of certain requirements by the casual/daily hired/contractual workers who have continuously worked in different government establishments for over ten years. The above Memorandum was further revised by the Government vide Memorandum no. 1107-F(P) dated 25th February, 2016 wherein the casual/daily hired/contractual workers working in different government establishments were sanctioned to receiving a terminal benefit of Rs. 2,00,000/- on attending the age of sixty years.

4. On account of extending the aforesaid benefits to the petitioner as well as other employees working with respondent no.2, the Joint Secretary Government of West Bengal conducted an inquiry regarding the engagement of such employees. However, since such inquiry was initiated at a point when none of the casual/daily rated/contractual workers had achieved the period of service exceeding ten years, it was not feasible to extend the aforementioned benefits to them. Nonetheless, the petitioner ends her term of employment in the government establishment on 31st August, 2018 and claimed for the above benefits. The respondent authorities, on the contrary, denied extending the said benefits to the petitioner.

5. Thus, being aggrieved by such act of the respondent authorities the petitioner made several representations dated 4th August, 2017 and 29th November, 2018 ventilating her grievances yet the respondent authorities paid no heed resulting in the petitioner initiating the present petition. Hence, the following is the issue before this Court:

I. Whether the petitioner will be covered by the Memorandum being no. 9008-F (P) dated 16th September, 2011 along with subsequent Memorandum no. 1107-F(P) dated 25th February, 2016 issued by the Finance Department, Audit Branch, Government of West Bengal?

6. The Learned Counsel representing the petitioner has contended that respondent no.2, being a Government of West Bengal Undertaking wherein the Government controls the affairs of respondent no.2 and qualifies it as a "Government Establishment" thereby encompassing its employees within the preview of Government employees. Thus, entitling them to the corresponding privileges and benefits associated with such employment. On repeated request by the Finance Department and the Joint Secretary, Government of West Bengal to furnish information regarding the casual/daily rated/contractual employees who have completed ten years in the services, the respondent no.4 neglected/omitted to provide the requested information. It is incumbent upon the respondent authorities to ensure the disbursement of the petitioner's terminal benefits, including the provident fund and the one-time terminal benefit, as per the stipulations outlined in Memo No. 1107-F (P) dated 25th February, 2016 as failure to comply with these obligations would constitute a breach of their legal duty. Moreover, the respondent authorities are obligated to acknowledge and give due regard to the notification issued by the Government of West Bengal, which specifically addresses the entitlements of contractual employees. On being engaged in any government establishment for more than 10 years but taken voluntary retirement, it is imperative for the respondent authorities to recognize the provisions stipulated in the notification wherein a terminal benefit of Rs. 2,00,000/- is provided on attending the age of sixty years and ensure their proper implementation for the benefit of contractual employees like the petitioner.

7. The Learned counsel for the respondent authorities submits that it does not fall within the purview of a governmental establishment or organization,

but rather operates as a company. The remuneration received by the respondent no.2's employees is not disbursed from the treasury of the State of West Bengal but rather derived from the company's own generated income. Consequently, the State of West Bengal extends financial assistance to the respondent no.2 in the form of loans, acknowledging its vulnerable financial state, which necessitates eventual repayment by the respondent no.2. Moreover, on receiving the aforementioned representations by the petitioners, respondent no. 4 duly corresponded with the Joint Secretary to the Government of West Bengal, Micro Small & Medium Enterprises & Textiles (MSMET), on 2nd January 2019, forwarding the said representation. Subsequently, the matter was deliberated upon by the competent authority within the MSMET Department of the Government of West Bengal. It was opined that individuals engaged under JPC and Job Supervision Contract, encompassing specific remuneration determination formulas, have consistently witnessed remuneration enhancements in accordance with the company's norms. Therefore, there exists no basis to consider the matter under the provisions stipulated in Memo No. 9008-F (P) and Memo No.1107-F (P).

8. Having heard the learned counsel for parties and on perusal of records this Court is of the view that the voluntary termination of service of the petitioner appointed under a contract or an agreement shall not be considered as a penalty, if it is in accordance with the terms and conditions of such contract. In the present case the petitioner adhered to the prescribed rules and ceased her term of employment in the government establishment. Thus, the petitioner's tenure of service remains, by virtue of which she shall be entitled to receive all terminal benefits for her service provided to respondent no.2.

9. The Supreme Court in **Delco Engineering Private Ltd. & others v. Shree Satish Prabhakar Padhye & others reported in 2010 4 SCC 378** dealt with the definition of "Government Establishment" extensively. It was

held that the definition of establishment itself, clearly establishes that all companies incorporated under the Companies Act are not establishments. The enumeration of establishments in the definition of 'establishment' specifically includes "a Government Company as defined in Section 617 of the Companies Act, 1956". This shows that the legislature, took pains to include in the definition of 'establishment' only one category of companies incorporated under the Companies Act that is the Government Companies' as defined in Section 617 of the Companies Act. The legislative intent was to define 'establishment' so as to be synonymous with the definition of 'State' under Article 12 of the Constitution of India. Private employers, whether individuals, partnerships, proprietary concerns or companies (other than Government companies) are clearly excluded from the 'establishments' to which section 47 of the Act will apply. Hence, in the present case, the Kalyani Spinning Mills Limited (respondent no.2) can be clearly determined as a Government of West Bengal Undertaking/Government Establishment.

10. This Court hereby requests the respondent no. 4, the Managing Director of Kalyani Spinning Mills Limited, mandating the computation of the petitioner's terminal benefit along with accrued interest. The said amount shall be duly intimated to the Finance Department, Audit Branch, Government of West Bengal, which shall, in turn, effectuate disbursement of the aforementioned sum to the petitioner but routed through the respondent no.4.

11. For the foregoing reasons the writ petition is allowed. All pending applications are accordingly disposed of.

(RAJARSHI BHARADWAJ, J)

Kolkata
14.07.2023
PA (BS)