

03.01.2023
DL-85
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 3551 of 2021

Dhirendra Nath Mondal
Vs.
State of West Bengal & Ors.

Mr. Achyut Basu,
Mr. Anirban Saha,
Ms. Punam Basu,
Mr. Somen Bose,
Mr. Srikumar Chakraborty
.....for the petitioner.

Mr. Santanu Kumar Mitra,
Mr. Anand Farmania
....for the State.

Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh
....for SBSTC.

The petitioner was working with the South Bengal State Transport corporation (in short, “SBSTC”) as a Conductor. The petitioner retired from service on August 31, 2018. Despite applying for his terminal benefits on September 17, 2018, the petitioner’s retiral benefits have not been released till date. The petitioner has prayed for release of the retiral benefits as per ROPA 2009 along with refund of an amount of Rs.50,438/- on account of house rent allowance along with electricity bill to the tune of Rs.1,45,000/-.

Mr. Basu, learned counsel appearing on behalf of the petitioner submits that whether or not the

petitioner is staying at the quarter allotted by SBSTC cannot be a relevant consideration for disbursement of the retiral dues of the petitioner. The employer/SBSTC has illegally withheld the retiral dues of the petitioner. He refers to a document annexed at page 21 of the writ petition.

From the said document, it appears that one of the employees of SBSTC has certified that all the housing quarters have been surrendered by SBSTC and the employer/SBSTC has no objection if the meter is transferred in the name of the petitioner. He relies on that document in support of his contention that there is a direct tenancy between the Government of West Bengal and the petitioner and the employer/SBSTC does not have any authority to refrain from paying the retiral dues of the petitioner on the ground that the petitioner has not vacated the quarter as the quarter is not in the possession or control of SBSTC. He relies on an unreported judgment of a Coordinate Bench of this High Court (**Sagarbhanga Sarkari Abashik Hitsadhani Samity v. State of West Bengal**) in support of his contention that the respondents/employers should delink question of payment of retiral benefits from the question of occupation of the flats and not withhold

the payment of retiral benefits including gratuity and leave salary.

Mr. Banerjee, learned counsel appearing on behalf of the employer/SBSTC, the respondent nos.2 and 3 submits that **Sagarbhanga Sarkari Abashik Hitsadhani Samity** (supra) is distinguishable on facts since the employees who were initially allotted the flats by the employer had subsequently entered into the agreements with the State Government for occupation of the said flats. Therefore, the privity of contract so far as the occupation of the said flats was concerned, existed between the State Government and the concerned employees and not between the employees and the companies concerned/ the employers.

Mr. Mitra, learned counsel appearing on behalf of the respondent nos.1 and 4 draws the attention of this Court to the report on affidavit affirmed on November 30, 2021. He submits that the flat occupied by the petitioner has not been received by the Estate Manager, Estate Directorate & Ex-Officio Deputy Secretary/respondent no.4. He submits that there is no independent contract as on date between the petitioner and the State of West Bengal/Respondent no.4 and there is no evidence to

show that the petitioner was entitled to occupy the flat.

Having considered the rival submissions of the parties and the materials placed on record, this Court is of the view that a dispute exists with regard to the fact whether or not all the quarters have surrendered by SBSTC to the Government of West Bengal. However, as far as the petitioner's flat/quarter is concerned, the respondent no.4 has affirmed an affidavit stating that the said flat has not been handed over to the respondent no.4. No independent contract exists between the State of West Bengal and the petitioner. The petitioner has produced no evidence to show that an independent agreement exists between the State and the petitioner, which entitles the petitioner to occupy the quarter. Since no independent agreement exists between the State of West Bengal and the petitioner, the case of **Sagarbhangha Sarkari Abashik Hitsadhani Samity** (supra) does not aid the case of the petitioner.

This Court cannot direct the employer to delink the question of payment of retiral benefits from the question of occupation of the flat. Further, the respondent authorities can find support in the judgment of the Hon'ble Supreme Court of India passed in Civil Appeal Nos.2766-2767 of 2005

(Secretary, O.N.G.C. Ltd. and Ors. Vs. V. U. Warriar) wherein it has been held that the High Court was unjustified in exercising extra ordinary/equitable jurisdiction in favour of an employee in directing payment of gratuity amount despite the fact that the employee failed to vacate the quarter even after his retirement and despite warnings given to him.

In the light of the discussions above, this Court holds that the issue of vacating of the quarter by the employee/petitioner cannot be delinked from the issue of payment of the retiral benefits payable to him by the employer. The employer/SBSTC cannot be directed to release all the retiral benefits as per ROPA 2009 to the petitioner without him handing over the quarter.

In the circumstances, **WPA 3551 of 2021** is **dismissed** without any order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)