

WPA 3518 of 2023

Debasish Chakraborty
Vs.
The State of West Bengal & Ors.

Mr. S.P. Lahiri,
Md. Habibur Rahaman,
Mr. Rajesh Naskar.
.....for the petitioner

Mr. Tapan Kumar Mukherjee,
Ms. Debdooti Dutta.
... for the State

The petitioner has been engaged in contractual post of Ejlash Peon under Judgeship of District Uttar Dinajpur on conditional and temporary basis against an UD post vide Order no. 118 dated July 15, 2010. The continuance of the service of the petitioner was dependent upon their satisfactory performance report till the age of attaining 62 years. The petitioner was appointed in ex-serviceman category retired from military service. The petitioner was entitled to draw emoluments per month at the initial basic pay (pay in the pay band + grade pay of the post).

Furthermore, the petitioner was entitled to the revised rate of dearness allowance and also entitled to house rent allowances and medical allowances vide Government order dated September 16, 2009.

The petitioner is aggrieved by a memorandum dated March 6, 2020 whereby the last drawn pay by a military pensioner in the revised pay structure before retirement from military service, ignoring the entire pension was fixed at the first Cell i.e., at the minimum pay of the Pay Matrix related to the post he joined, notionally with effect from January 1, 2016 or from the actual date of joining till December 31, 2019 whichever is later. The actual payment was to be made with effect from January 1, 2020 or from the date of joining the post after January 1, 2020. The said memorandum was clearly applicable to the military pensioners who have been appointed in Civil posts under the Government on or after January 1, 2016.

Mr. Lahiri, learned Counsel on behalf of the petitioner submits that the petitioner is aggrieved by the said memorandum dated March 6, 2020.

Despite the fact that the memorandum is not applicable in the case of the petitioner, the monthly pay of the petitioner has been reduced due to the wrong fixation of pay by the State respondents.

During the pendency of the writ petition, the petitioner's pay has been stopped with effect from February 18, 2023, upon attaining 60 years. However, the contract of service clearly stipulated that the petitioner's service was to continue till the attainment

of 62 years upon satisfactory performance report by the office of the District Judge.

He submits that there is no allegation of unsatisfactory performance by the petitioner and, therefore, his appointment could not be terminated prior to the attainment of the age of 62.

He submits that the applicable memorandum for the petitioner was the memo dated June 7, 2010 vide memo no. 4785 F (P) issued by the Finance Department, Government of West Bengal.

The said memo is now being sought to be clarified vide memo dated March 30, 2022 by the State Government and the same is not permissible.

It has been stated by the said memo dated March, 30, 2022 that the order dated April 11, 2012 vide memo no. 2210(18)/J issued by the Judicial Department, Government of West Bengal regarding the fixation of benefits under Finance Department's memo dated June 7, 2010 vide memo no. 4785 F (P) is not applicable to contractually engaged ex-military servicemen/personnel under the Fast Track Courts as it is not in order.

The Judicial Department's memo dated April 11, 2012 was issued without the concurrence of the Finance Department and the same needed to be modified accordingly.

Ms. Dutta, learned Counsel appearing on behalf of the State also made similar submissions with regard to the memo dated April 11, 2012 not being applicable to the contractually engaged ex-military personnel relying upon the report-on-affidavit filed by the State.

The Joint Secretary, Department of Judicial, Government of West Bengal vide memo no. 59/JD/X dated April 8, 2022 has also reiterated the said stance without clarifying why the said memo dated April 11, 2012 was not in order and also without stating the reason why contractually engaged ex-military personnel appointed on July 15, 2010 would not be getting benefits under the memo dated June 7, 2010.

Considering the submissions made by the parties and the materials placed on record, this Court is of the view that the memorandum dated March 6, 2020 issued by the Finance (Audit) Department is only applicable to the employees/pensioners who have been re-employed in service on or after January 1, 2016. The said memo cannot be held to be applicable to the employees/ex-serviceman, retired from military service who have been appointed prior to 2016.

Furthermore, the petitioners were *appointed* not *engaged* by the order no. 118 dated July 15, 2010 against specific posts and with specific scale of pay. Even though they were employed on temporary basis

their appointments were against regular posts and they were not contractually engaged.

The Finance Department's memorandum dated June 7, 2010 also does not make any distinction between a contractual employee and an employee appointed on regular basis even if for the sake of argument it is accepted that the petitioners were contractually engaged.

In such view of the matter, the interpretation that is sought to be given to the memo dated June 7, 2010 vide memo dated April 8, 2022 by the Judicial Department vide memo no. 59/JD/X is arbitrary and perverse.

Despite the fact that the Finance Department's memo dated June 7, 2010 was accepted by the memo dated April 11, 2012 in respect of ex-military serviceman by the impugned memo dated April 8, 2022 the State is now seeking to hold that the said memorandum dated April 11, 2012 is not in order.

The said office order dated April 11, 2012 clearly states that the pay fixation is made in accordance with the Finance Department's memo dated June 7, 2010.

The respondent authorities cannot approbate and reprobate and cannot seek to take away the service benefits of an employee by simply making a bald statement that the office order dated April 11, 2012 is

not in order. The employer cannot blow hot and cold. A beneficial reference may be made to **Balbir Singh vs. State of H.P. & Ors.**) reported in (2000) 10 SCC 166.

In any event, this Court has held that the petitioner was *appointed* on temporary basis and not *engaged* on a contractual basis vide memo dated July 15, 2010.

In such view of the matter, this Court holds that the reduction of the monthly salary with effect from March 20, 2021 is illegal and or arbitrary and the petitioner has to be continued to be paid in terms of the last drawn salary as on January, 2020. The arrears on account of differential amount pay from January 2021 till March 2023 will be paid by the authorities concerned within three months from the date of this order.

The authorities will also disburse the current monthly salary of the petitioner from April 2023 since the petitioner was appointed till the age of 62 years vide office order dated July 15, 2010 within the 10th of each succeeding month till the attainment of 62 years.

With the directions as above, **WPA 3518 of 2023** is **disposed of**.

All parties are directed to act on a server copy 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.)