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10.10.2023
S.D.

W.P.A. 3831 of 2023

**Biswanath Mondal
Vs.
West Bengal State Electricity
Distribution Company Limited & Ors.**

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
Mr. Soumik Dey
Ms. Tapati Saha

...For the Petitioner

Mr. Sumit Roy

..For the WBSEDCL

The petitioner was an employee of West Bengal State Electricity Distribution Company Limited (WBSEDCL). The petitioner was superannuated from service on April 30, 2018.

A criminal case was registered against the petitioner on November 9, 2011. The petitioner was taken into judicial custody on May 10, 2012. He was released on bail on June 8, 2012. The petitioner resumed his service on June 9, 2012.

By a judgment and order dated March 26, 2018, the petitioner was honourably acquitted by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Jangipur, Murshidabad.

By an order dated February 23, 2021, an Hon'ble Coordinate Bench of this Court in WPA 3101 of 2021 directed

the respondent WBSEDCL to consider the petitioner's representation for pensionary benefits and other retiral benefits.

Mr. Chattopadhyay, learned counsel appearing on behalf of the petitioner submits that despite the order dated February 23, 2021, the petitioner was not given the third level benefits under the Assured Promotion Scheme (APS). The petitioner was eligible for the same as per the rules of the company and there was no legitimate reason for not granting the third benefits of the APS.

Mr. Roy, learned counsel appears on behalf of the WBSEDCL. He submits that the issue whether the benefits under APS can be given to the petitioner depends on the following criteria:-

- a. Attendance.
- b. Performance Appraisal Report (PAR)
- c. Suitability Test and
- d. Observance of Command Line Structure.

Due to the non-submission of PAR by the petitioner in due time, his selection for grant of third benefits under APS could not be granted. Furthermore, after his superannuation, the petitioner cannot now as a matter of right claim benefits of third APS.

Attention of the Court is drawn to a document dated September 24, 2021 to submit that the petitioner could not produce the received copy of the Self Appraisal Report (SAR) which is mandatory for the purpose of drawing up of the PAR of an employee, as per the rules of the Corporation. Since PAR for the necessary period could not be drawn up due to the fault of the petitioner/employee, he is not entitled to the benefits of third APS. He relies on a decision reported in (1997) 6 SCC 766 (**Indian Council of Agricultural Research & Anr. Vs. T.K. Suryanarayan & Ors.**) in order to contend that the petitioner cannot be wrongly granted promotion. The rules with regard to promotion/grant of benefits have to be considered by the authorities, before giving promotion.

The facts of the aforesaid case are distinguishable from the present case since due to erroneous interpretation of statutory rules, the writ petitioners were given promotion, without educational qualification. The substantive issue of eligibility for promotion was considered in the said case.

No substantive issue regarding grant of promotional benefits under APS is under consideration in the present writ petition. The issue is whether or not the procedure for drawing of PAR has been complied with by the petitioner/and

the respondent authorities for consideration of the grant of third benefits of APS.

Next, he relies on an unreported decision of an Hon'ble Division Bench in the High Court of Jharkhand at Ranchi in LPA 75 of 2017 (**Krishna Chandra Gope vs. The State of Jharkhand & Ors.**). The issue in that case relates to regularization of the petitioner who was a Headmaster. In that case, it was held that the right to be considered for promotion is different from the right to promotion.

The petitioner contended that even though he was appointed in 1982, he should have been at least considered for absorption from 1992 when he obtained the B.Ed. degree. The facts of the aforesaid case are different from the facts of the present case, as the issue of absorption or regularization of an employee to a promotional post, is not under consideration in the present case.

After considering the rival submissions of the parties and the materials placed on record, this Court finds that the petitioner has clearly stated that he is again submitting his SAR/PAR on September 24, 2021. The said statement of the petitioner has not been controverted by the respondent authorities. Furthermore, from the guidelines regarding the Performance Appraisal and Self-Assessment Report of

WBSEB, it appears that the PARs of employees have to be written by March 31 every year. Every employee shall initiate action by submission of his SAR by April 15, to his immediate Controlling Officer.

Each Initial Reporting Officer shall be responsible for submission of PAR of the employees under him by April 30 of every year. The Initial Reporting Officer shall submit it to the Superior Reviewing Officer, who in turn shall transmit the same with his observations and counter signature to the next higher Reviewing Officer within May 15 every year. In no case, the Reviewing Officer will detain such reports for more than 10 days.

The Reviewing Officer should forward such reports with his comments to next higher Officer as quickly as possible and the same should be done on or before June 30 every year.

If, the Initial Reporting Officer/Reviewing Officer fails to draw up and submit such reports within the time schedule prescribed, the next higher authority, i.e. Reviewing Officer/head of the office shall immediately take the matter up with defaulting officer so that the completed reports reach the Secretary or other evaluating authorities, not later than June 30 of every year.

If there is delay at any level, the concerned officer should send a stricture to the officer at the lower level with copies to his own Controlling Officer. PARs of class-III employees like the petitioner should be prepared in two copies – one copy to be retained with the Controlling Office and the other copy to be transmitted to zonal offices etc, not later than June 30 of every year.

Even assuming that the petitioner did not initiate his Self-Appraisal Report within the time stipulated, nothing has been brought on record to show that such a finding was made by his immediate Controlling Officer or any step has been taken by the Reviewing Officer or any other higher authority asking the defaulting officer for non-submission of PARs within time. Had the Respondent Corporation acted in accordance with the own rules/Guidelines the reason for non-submission of PAR would have been evident.

To the mind of this Court, an employee who is eligible for grant of further benefits will not of his own accord delay or omit the filing of his own SAR. Therefore, this Court is of the opinion that the responsibility for non-submission of PARs for consideration of the eligibility of the petitioner to the benefits of third APS lies with the respondent authorities.

Accordingly, the impugned order dated November 8, 2021 is set aside and/or quashed.

The petitioner/an employee cannot be made to suffer due to laches or negligence on the part of the respondent authorities. The petitioner shall be considered for grant of benefits as per the order dated March 24, 2021 passed by the General Manager (HR & A), WBSEDCL. Such benefits will be granted to the petitioner within two months from the date of the order if otherwise found eligible. The arrears of such benefits will also be given to the petitioner within two months from the date of the order.

With the directions aforesaid, **W.P.A. 3831 of 2023** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

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

(Lapita Banerji, J.)

