

WP.ST 21 of 2020
(via video conference)

Shri Subhas Chandra Konar (Since deceased)
Represented by his legal heirs & representatives Bulbul Konar & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Abhijit Basu
Ms. Sumitra Das

... for the petitioners

Mr. Sandip Kumar Bhattacharya

... for the respondent no. 3

Mr. Tapan Kumar Mukherjee, Learned AGP
Mr. Somnath Naskar

... for the State

The writ petition is directed against an order dated February 20, 2019 passed in O.A. 211 of 2011, by the West Bengal Administrative Tribunal.

The learned Tribunal negated a claim of the writ petitioner for unrevised pay scale no. 18 on completion of 20 years of service w.e.f. April 1, 1999 primarily on the ground that, the writ petitioner approached the learned Tribunal on an earlier occasions and did not canvass the point of such pay scale ever. The learned Tribunal found the claim to be barred by the principles of constructive resjudicata.

Learned advocate appearing for the writ petitioner

submits that, the principles of resjudicata or constructive resjudicata will not apply in the facts and circumstances of the present case. In the earlier round of litigation, the writ petitioner was concerned with a disciplinary proceeding and an order of punishment passed therein. The writ petitioner was pushed to scale no. 16 and was fighting for restoration of such scale. He submits that, since the claim of unrevised pay scale no. 18 on completion of 20 years of service w.e.f. April 1, 1999 so far as the writ petitioner is concerned, was never canvassed before any authority, the same should be considered both by the learned Tribunal and by the Hon'ble High Court. He submits that, the State should be acting as a model employer and affording every emoluments that an employee is entitled to. The State denied the legitimate claim of the writ petitioner wrongfully. Therefore, the State should be directed to pay the unrevised pay scale no. 18 on completion of 20 years of service w.e.f. April 1, 1999 to the writ petitioner.

Learned Additional Government Pleader appearing for the State submits that, the employee approached the learned Tribunal twice with regard to the disciplinary proceedings, prior to the impugned order. In none of the

proceedings, did the writ petitioner canvass the point of entitlement to unrevised pay scale no. 18 on completion of 20 years of service w.e.f. April 1, 1999. He contends that the claim of the writ petitioner was correctly rejected on the ground of constructive resjudicata.

Learned advocate appearing for the respondent no. 3 relies upon a notification bearing no. 961-F(P) dated February 7, 2011 and submits that, the State issued such memorandum in order to provide for the difference in between minimum pension and family pension of officers retired prior to January 1, 2006 for the unrevised scale no. 18 and scale no. 19 respectively. He submits that, the employee concerned retired on September 30, 2002 and, therefore, he is governed by the notification dated February 7, 2011. This notification was required to be placed before the learned Tribunal. He contends that, there may be an issue of continuing cause of action so far as the writ petitioner is concerned.

Indisputably, the employee claims benefit of unrevised pay scale no. 18 w.e.f. April 1, 1999. The employee approached the learned Tribunal in aggregate thrice. The employee suffered disciplinary proceeding. Steps taken in

such disciplinary proceeding were challenged by the writ petitioner by way of O.A. 376 of 2002, which was disposed of by an order dated April 7, 2002. The disciplinary proceeding, thereafter, culminated into an order of punishment, which was assailed before the learned Tribunal by way of O.A. 1501 of 2003, which was disposed of by an order dated December 12, 2006.

In the two earlier round of litigation, the employee did not rake up the issue of his entitlement to unrevised pay scale no. 18 on completion of 20 years of service w.e.f. April 1, 1999.

We perused the prayer made in O.A. 1501 of 2003 where the writ petitioner sought relief with regard to the order of punishment by way of reduction of his pay scale. The order dated December 6, 2012 quashed the punishment imposed to the employee. It is, thereafter, the employee approached the learned Tribunal by way of O.A. 211 of 2011 where the impugned order dated February 20, 2019 was passed.

By the impugned order, the learned Tribunal found gross delay in approaching the learned Tribunal, which remained unexplained. Moreover, the learned Tribunal found

that, the claim of the employee was barred by the provisions of constructive resjudicata with the employee not canvassing such entitlement in the earlier proceedings before the learned Tribunal.

The Memo No. 961-F(P) dated February 7, 2011 deals with unrevised pay scale nos. 18 and 19 respectively in respect of officers retiring prior to January 1, 2006. In the facts of the present case, the employee concerned, retired on September 9, 2002. The employee concerned retired without availing of the unrevised pay scale no. 18 at the time of his retirement. He did not canvass his entitlement to receive unrevised pay scale no. 18 in the earlier two proceedings. There is substance in the contention that the conduct of the employee visits him with the principles of resjudicata. In our view, in the factual matrix as noted above, Memo No. 961-F(P) dated February 7, 2011 will not come to the aid of such an employee.

Relief to the concerned employee was denied on the ground of principles of resjudicata as also on the ground of delay of nine years. Before us also, we are not satisfied with the grounds sought to be canvassed with regard to the delay and also with regard to the ground of constructive

resjudicata. The concerned employee was aware that he was entitled to all the benefits. He was under legal advice when he approached the learned Tribunal repeatedly. Assuming that he was not aware of his entitlement his advocates were in a position to advise him. The concerned employee did not, at the risk of repetition canvass his entitlement in the earlier two original applications.

In such circumstances, we find no infirmity in the order of the learned Tribunal.

WP.ST 21 of 2020 is dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)