

28-11-2023

ct no. 13

sl. 9

pk

WPA 5417 of 2023

Amal Chandra Paul and others

-Versus-

The North Bengal State Transport Corporation and
others

Mr. Sufi Masih Aftab

... for the petitioners

Mr. Amal Kumar Sen,
Mr. Sabyasachi Mondal

... for the NBSTC

Mr. Arjun Ray Mukherjee,

... for the State.

1. A Co-ordinate Bench of this Court had passed order on 23rd March, 2023 asking the NBSTC to file a report. Such report has been filed. The matter was taken up from time to time and on 21st September, 2023 a further report was called from the State Government as well as the NBSTC, based on the said report.

2. In the report reference is made to a directive of the Transport Minister of the State dated 31st October, 2011. By the said letter the Transport Minister had directed that the Corporations under the Ministry including the NBSTC should not take any decision having financial implications without the prior approval of the State.

3. Admittedly, the V.R.S. Scheme in question was floated in the year 2012 with the prior consent of the State. The petitioners accepted and acted upon and altered their positions based on the scheme in the year 2014, 2015 and 2016. They have received most of the benefits under the scheme except the second tranche of the Career Advancement Scheme (CAS).

4. In the backdrop of the above, the submissions of the State placing reliance on the letter dated 31st October, 2011, to say the least is grossly inappropriate.

5. The next argument of Mr. Sen that in terms of Section 34 of the Road Transport Corporation Act, 1950 any decision of a Road Transport Corporation requires prior concurrence of the State is also liable to be rejected on the same ground.

6. The next argument of Mr. Sen on behalf of the NBSTC is that of limitation. It is argued that the claim of the petitioners i.e. 20 years C.A.S. benefits arose in the year 2014 and prior thereto. The petitioners have approached in Court in 2023 for the first time on the said issue. Their claims were deemed to be barred by limitation.

7. This Court has carefully considered the argument of Mr. Sen. Service benefits of an employee of a body that is 'State' under Article 12 of the Constitution of India are protected under Articles 14

and 16 thereto. It would be, therefore, grossly inappropriate to apply any period of limitation to them particularly in the facts of the case.

8. The petitioners have been continuously representing before the authorities since 2014 for the CAS benefit. The rejection by the NBSTC, finally and parallelly came in the year 2020. The cause of action of the petitioners cannot be barred by limitation. It would be inappropriate to hold that retired employees' service benefits do not assume a continuous nature unless they are specific, definite and a distinct claim applicable to a specific and particular employees.

9. This Court sees that Career Advancement Scheme benefits after 10-20 years of service is a guaranteed benefit to all employees of the State and across the country in general. It would be illegal to deny such basic entitlement to the employees of the NBSTC and the petitioners in particular. The impugned order is grossly inappropriate, flagrantly arbitrary and does not survive the test of reasonableness, fairness and propriety under Articles 14 and 16 of the Constitution of India.

10. One must also bear in mind principles of limitation are not applied under Article 226 of the Constitution of India. What is applied other principles of delay and laches. This Court does not

find any deliberate and wilful delays of laches or inaction on the part of the petitioners.

11. For the reasons, inter alia, indicated above, the argument of bar of limitation against the petitioners raised by the respondents is rejected.

12. Coming to the merits of the claim of the petitioners it is not in dispute that Clause 3 at the second page of the VRS/Notification of the NBSTC dated 14.11.2012 clearly mandates as follows. :

“Employees applying for Voluntary Retirement under the Scheme will also receive their arrear pay and allowance due on the date of retirement.”

13. This would essentially imply and mean that all and every benefit that an employee of the NBSTC was entitled to, at the time of exercise of option for VRS under the said Notification, are guaranteed and available to them. The second tranche of the Career Advancement Scheme benefit after 20 years of continuous service is definitely a right which had accrued to the petitioner. To deny such right and entitlement would be a denial of rights, inter alia, under Articles, 14, 16 and 21 of the Constitution of India. The same cannot be permitted.

14. By the reason of accepting the application of the petitioners for voluntary retirement under the aforesaid Notification dated 14.11.2012 and making payment to the petitioners, it is clear that the writ

petitioners have been expressly allowed to alter their positions. The respondents would thus be lawfully estopped from denying the second Career Advancement Scheme benefit of increment after 20 years of completion of service.

15. For the reasons stated herein above, there shall be a writ of mandamus directing the respondents and particularly the NBSTC to release second Career Advancement Scheme benefit to each of the writ petitioners who opted for V.R.S. under the aforesaid scheme dated 14.11.2012 within a period of one month from date positively.

16. The said amounts shall be paid together with interest at the rate of 9 per cent from the date on which the petitioner had completed 20 years of service till the date of actual payment.

17. The writ petition is disposed of.

18. There will be no order as to costs.

19. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)