

Dd 23 05.10.2023

WP.ST. 48 of 2015
with
I.A NO: CAN 1 of 2023

Sambhu Ghosh
Vs.
State of West Bengal & Ors.

Mr. Pinaki Dhole, Advocate
... ... For the Petitioner

Mr. Arka Kumar Nag, Advocate
... ... For the State

In Re: I.A NO: CAN 1 of 2023

For the ends of justice and in view of the averments made in the application for restoration, order dated August 22, 2023 is recalled. WP.ST. 48 of 2015 is restored to file and number.

CAN 1 of 2023 is **allowed**.

In Re : WP.ST. 48 of 2015

The writ petition is directed against an order dated February 12, 2014 passed by the West Bengal Administrative Tribunal in OA 1064 of 2013.

By the impugned order, the Tribunal noticing that, the revisional authority set aside the order of punishment and directed reinstatement of the petitioner, as also directed that the period between the order of dismissal and the reinstatement should be treated as dies non, was pleased to modify the order of the revisional authority. By the impugned order, the Tribunal directed that, the petitioner shall not be entitled to back

wages for the period of his dismissal till reinstatement but such period, for all practical purposes, shall be taken into consideration for calculation of retiral benefits of the petitioner at an appropriate time.

Learned advocate appearing for the writ petitioner submits that, since the charges as against the writ petitioner failed and since such is the observation of the revisional authority, then, the writ petitioner is also entitled to the period between the dismissal of service and his reinstatement to be taken into consideration for all other ancillary service benefits including promotion, benefit of revision of scale of pay and other benefits.

Learned advocate appearing for the State submits that, since the writ petitioner was reinstated, he is entitled to the service benefits for the period between dismissal of service and his reinstatement save and except the back wages. He submits that, the impugned order was complied with by the authorities prior to the writ petitioner approaching the Court.

There is substance in the contentions of the writ petitioner. Two charges were framed against the writ petitioner in the disciplinary proceeding. The first charge was in relation to a criminal proceeding where he was an accused. The criminal proceeding ended without the writ petitioner being convicted therein. The other charge was with regard to unauthorized absence. The authorities found that, the writ petitioner was suffering from jaundice at that relevant period of time and, therefore, the disciplinary authority itself directed adjustment of the leave available to the writ petitioner against such period.

In such context, the revisional authority deemed it appropriate that the order of punishment of dismissal from service was disproportionate. Consequently, the

revisional authority directed reinstatement of the writ petitioner with the direction that, the period between dismissal from service and his reinstatement will be considered as dies non. The Tribunal by the impugned order modified the order of the revisional authority to the extent stating that, the writ petitioner will not be entitled to the back wages for the period between dismissal of service and his reinstatement. However, such period of time will be considered for the purpose of calculation of his retiral benefits. Since, the revisional authority found that, no punishment could be inflicted upon the writ petitioner and in view of the nature of charges therein, and directed his reinstatement, it would be appropriate that the writ petitioner is made available his service benefits sans the back wages for such purpose, along with retiral benefits as directed by the impugned order of the Tribunal.

In such circumstances, we modify the impugned order by holding that the writ petitioner is entitled to all service benefits taking into consideration the period from dismissal of service till his reinstatement including the retiral benefits for such period, excepting back wages for such period.

WP.ST 48 of 2015 is accordingly **disposed of** without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)