

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 4217 of 2013

Goutam Kanti Ghosh

Versus

South Bengal State Transport Corporation & Anr.

For the petitioner : Mr. Manas Kundu,
Mr. S. Mukherjee.

For the SBSTC : Mr. Ayan Banerjee,
Ms. D. Dhamali,
Ms. R. Ghosh.

Heard on : 28.03.2023

Judgment on : 28.03.2023.

Raja Basu Chowdhury, J:

1. The present application has been filed *inter alia* challenging the order of suspension dated 22nd November, 2012, issuance of charge sheet dated 6th December, 2012 as also complaining of violation of principles of natural justice. The petitioner claims to have been appointed as a reserved pool conductor, vide order dated 19th March, 1998 issued by the South Bengal State Transport Corporation (hereinafter referred to as "SBSTC"), the respondent no. 1 herein. After successfully completion of his

probationary period of nine months, the service of the petitioner was confirmed.

2. While the petitioner was posted at Durgapur Depot, the petitioner was issued an order of suspension dated 22nd November, 2012 as also a charge sheet dated 6th December, 2012, both issued by the respondent no. 2. Along with the charge sheet, a statement of imputations of misconduct or misbehavior and a list of documents, a list of witnesses by whom the said articles of charge were proposed to be sustained were also made over to the petitioner.
3. The said charge sheet was issued in exercise of powers conferred by Regulation 28 of the South Bengal State Transport Corporation Employees Service Regulations, 1987 (hereinafter referred to as "the said Regulations"). To morefully appreciate the charge leveled against the petitioner, the charge is extracted hereinbelow: -

"It revealed from the report that on 20.11.2012 while he was performing duty in Durgapur-Balurghat (Dn) route with the Veh. No. WB-39A/3198, the Corpn. Checking personnel of Belghoria Divn. SBSTC consisting of S/Sri Sibaji Biswas, ATM, Subir Dey, ZI, Goutam Chakraborty, ZI & Samiran Bhattcharjee, ZI boarded the vehicle at Gazole bus stand and proceeded upto Malda at about 09 AM. They checked his cash bag and found an Excess amount of Rs. 1960/- (Rupees One thousand nine hundred sixty) only against the sale of Rs. 5,570/- (Rupees

Five thousand five hundred seventy) only including bag money. He failed to account for excess amount found in his cash bag.

As a conductor he is the custodian of cash & tickets of the corp. & also bound to perform duty faithfully carefully with due diligence & care. On the said date he failed to maintain high degree of integrity which could have financial loss to the corp. He failed to discharge his duty faithfully diligently and to prevent financial loss to the corp. He is therefore, charged for violation of the provisions of 25(1), (2), and (6) of the SBSTC ESR .”

4. According to the petitioner, since the petitioner required certain documents to respond to the charge sheet, the petitioner by representation dated 19th December, 2012, requested the respondents to supply certain documents, particulars whereof as sought for are extracted below:-

“1) Legible and authentic copy of the way-bill submitted before the office by me by which the sale proceeds were deposited.

2) Legible and authentic copy of the report as alleged in the purported chargesheet.

3) Legible copy of the provisions of Regulation 25 (1), (2) and (6) of SBSTC ESR.

4) Name of the authority with designation under whose direction the purported preliminary checking report dated 21.11.2012 has been prepared.

5) Name of authority with designation before whom the purported preliminary checking report dated 21.11.2012 is submitted?

6) Report as to whether any one claimed any money from the SBSTC authority for the journey in the bus on the material day?

7) Any other copy of the documents and informations may be asked for with prior intimation.”

5. Incidentally, the respondents while purporting to respond to the petitioner's representation by cover of letter dated 26th December, 2012, furnished photocopies of certain documents to the petitioner, some of which were not even called for by the petitioner. Since the respondents did not supply the petitioner with the required documents, the petitioner was constrained to make further representations, including the representation dated 4th February, 2013. Despite receipt of such representation, since the respondents did not furnish the relevant documents to the petitioner, as called for, the petitioner was constrained to move the instant writ application.

6. At the interim stage, by an order dated 26th February, 2013, this Court upon taking into consideration the case as made out by

the petitioner was, *inter alia*, pleased to pass an *interim* order directing the respondents to furnish the documents as prayed for by the petitioner vide his letters dated 19th December, 2012, 2nd January, 2013 and 4th February, 2013. It was further made clear that without furnishing the aforesaid documents as sought for by the petitioner, the respondents shall not proceed with the charge sheet, however, in the event, the aforesaid documents are furnished to the petitioner, they will be free to proceed with the charge sheet but shall not take any final decision thereon without leave of the court.

7. Mr. Kundu, learned Advocate, representing the petitioner submits, neither did the respondents supply the petitioner with the required documents nor did they ultimately proceed and complete the enquiry proceedings.
8. In the interregnum, by an office order dated 16th April, 2018, the respondent no. 2 revoked the order of suspension and directed the petitioner to report for his duty to the Depot Manager, Durgapur Depot instead of Burdwan Depot, SBSTC. Pursuant to the aforesaid order, the petitioner reported for duty and subsequently was superannuated from service in furtherance of a notice of superannuation dated 29th November, 2021, with effect from 28th February, 2022.
9. It is submitted that the respondents having not completed the enquiry proceedings, could no longer continue with the enquiry

proceedings once the petitioner was superannuated from services. Consequent upon superannuation of the petitioner, the employee-employer relationship between the petitioner and the respondent no. 1 ceased to exist and as such in absence of any rule providing for continuance of enquiry proceedings, post superannuation, no enquiry domestic or otherwise could be proceeded with by the respondents. It is submitted by Mr. Kundu that there is no provision in the said Regulation which enables or authorize the respondents to proceed with the enquiry post superannuation.

10. To bring the subsequent events to the notice of the Hon'ble Court, a supplementary affidavit has been filed. By referring to the supplementary affidavit, it is submitted that subsequent to the petitioner being superannuated, on 28th July, 2022 when the aforesaid matter had come up for hearing, it was represented by learned Advocate representing the respondents, that the retiral dues of the petitioner had been paid, by online transfer and in support thereof a chart, showing details of the payments made in favour of the petitioner was also handed over to the petitioner's advocate in Court.

11. The petitioner had since, verified the aforesaid particulars provided in the chart and had tallied them with his bank account, where upon he had been able to ascertain that the respondents have made short payment. The entirety of the retiral

dues as was payable on the petitioner on his superannuation had not been disbursed in favour of the petitioner. The particulars of the retiral dues which have been short paid, have been identified by the petitioner and is set forth in paragraph 10 of the said supplementary affidavit. By relying a judgment delivered by the Hon'ble Apex Court in the case of ***Bhagirathi Jena v. Board of Directors, O.S.F.C. & Ors.***, reported in **(1999) 3 SCC 666** and the judgment delivered by the Hon'ble Apex Court in the case of ***Dev Prakash Tewari v. Uttar Pradesh Cooperative Institutional Service Board, Lucknow & Ors.***, reported in **(2014) 7 SCC 260**, it is submitted that once a domestic enquiry lapses by reasons of cessation of master-servant relationship, the employee is entitled to full retiral benefits on his retirement.

12. Mr. Kundu, learned Advocate, has also referred to an unreported judgment delivered by this Hon'ble Court passed in WP 1569 (W) of 2012 dated 20th March, 2014, in support of his contention that there is no provision in the service regulation of the respondents, to continue with any disciplinary proceedings subsequent to retirement of its employees.

13. *Per contra*, Mr. Banerjee, learned Advocate, representing the respondents submits that the petitioner is attempting to enlarge the scope of the writ application by filing supplementary affidavit. By referring to the prayers made in the writ petition, he says that no relief of the nature as prayed for in the

supplementary affidavit can be granted. The writ petitioner at the time of filing the writ application could not have contemplated the reliefs, as claimed in the supplementary affidavit. If the petitioner insists for his claim, for disbursal of full retiral dues, he has to file a separate writ application. In any event, the writ application itself is yet to be decided and unless this Court decides the writ application, no relief can be afforded to the petitioner. He, however, fairly submits that there is no rule or regulation which enables the respondent no.1 to continue with any enquiry proceedings consequent upon retirement/superannuation of an employee. According to him the judgments relied upon by Mr. Kundu are distinguishable. In the present case, the petitioner had stalled the domestic enquiry. The petitioner repeatedly prevented the respondents from concluding the enquiry proceedings and it is, for the petitioner that the enquiry proceedings ultimately could not be concluded. While referring to the aforesaid judgments, he says that in both the cases, the Court had not granted stay of enquiry proceedings. He submits that the judgment is an authority for it what decides, and the aforesaid judgments have no bearing in the instant case.

14. Mr. Kundu in reply submits that it was for the respondents to take appropriate steps for concluding the enquiry proceedings. The respondents also never bothered to approach the Court. Since, the enquiry was not concluded, no leave was sought for by

the respondents for passing any final order. The petitioner should not be denied his retiral entitlements for failure on the part of the respondents to take appropriate steps.

15. Having heard learned Counsel for the parties and having considered the materials on record, I find that although the petitioner had been under suspension prior to his superannuation, the respondent no. 2 by an office order dated 16th April, 2018 had revoked the order of suspension and had directed the petitioner to report for duty. Despite the said order records that the same was without prejudice to the finalization of the disciplinary case pending against the petitioner, initiated vide charge sheet dated 6th December, 2012, records reveal that by a subsequent notice in writing dated 29th November, 2021, the respondents had purported to notify the petitioner of his date of superannuation. Consequent upon the aforesaid, the petitioner was also permitted to retire and was superannuated from service with effect from 28th February, 2002. The matter did not stop there. The respondents further during the pendency of the writ application on their own volition made payment of the retiral dues and on 28th July 2022, handed over a chart, in Court, showing particulars of payments made in favour of the petitioner which, *inter alia*, includes provident fund and gratuity.

16. The petitioner claims that he has not been paid entirety of his entitlement dues to him, as indicated in paragraph 10 of his

supplementary affidavit. I find that Mr. Banerjee by referring to paragraph 4 sub-paragraphs (h) and (i) of the affidavit in opposition, filed by the respondents to the supplementary affidavit, has claimed that the petitioner is not entitled to gratuity at enhanced rate since, there was no outcome of the disciplinary proceedings. It is also contended that the petitioner cannot be entitled to the enhanced rate of gratuity or other retiral benefits for the period for which the petitioner was under suspension.

17. I, however, find that since the petitioner was permitted to retire without concluding the enquiry proceedings, the employee-employer relationship having ceased to exist, the respondents could no longer continue with the departmental proceedings in absence of any regulation authorising continuance of enquiry proceedings beyond the date of superannuation. It has, however, been fairly submitted by Mr. Banerjee that there is no provision in the said Regulation, which enables them to proceed with the enquiry any further. In view thereof, in my opinion, the enquiry having lapsed, the respondents cannot be permitted to withhold the retiral benefits of the petitioner.

18. I find the Hon'ble Supreme Court in the case of **Bhagirathi Jena** (surpa) and in the case of **Dev Prakash Tewari** (supra) has held that in absence of any provision in the Regulation, authorizing the employer to proceed with the enquiry consequent upon cessation of the employee-employer relationship, there is no

legal authority vested in the employer to make any reduction in the retiral benefits. In the instant case, after retirement of the petitioner, the petitioner has come forward to claim his retiral dues by filing a supplementary affidavit. In my view, directing the petitioner to file a further writ application to seek disbursal of retiral dues would be travesty of justice. This Court is competent to mold the reliefs and pass such orders as it may deem fit.

19. Non-completion of the enquiry, cannot and does not authorise the respondents to deny disbursement of the entire retiral dues of the petitioner. In view thereof, the petitioner shall be entitled to full retiral benefits. The respondents are directed to forthwith re-compute and disburse the retiral dues payable to the petitioner along with all consequential benefits. Such payments must be made to the petitioner within a period of eight weeks from the date of communication of this order.
20. With the aforesaid observations and directions, the writ application, being No. WPA 4217 of 2013, stands disposed of.
21. There shall be no order as to costs.
22. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Raja Basu Chowdhury, J.)