

12.09.2023
Item No.15
Court No.11
Avijit Mitra

WPCT 57 of 2023

In re: An application under Article 226 of the Constitution of India;

And

Jadab Chandra Mahato
- Versus -
Union of India & ors.

Mr. Lalratan Mandal,
Mr. Dilip Kumar Sadhu
...for the petitioner

Mr. D.N. Ray,
Ms. Anamika Pandey,
...for the respondents

This case has a chequered history. The applicant/writ petitioner herein initially approached the learned Tribunal by filing an original application being O.A. No. 1467 of 2010 praying for sanction of pension upon condonation of deficiency in qualifying service. The said application was dismissed on 4th April 2012. Challenging the same, the petitioner preferred a writ petition being WPCT No. 121 of 2012. By an order dated 17th October 2012, the Hon'ble Court set aside the learned Tribunal's order dated 4th April, 2012 and directed the respondents to consider the petitioner's claim in light of the provisions of Rule 88 of the CCS (Pension) Rules, 1972 (in short, 1972 Rules). Pursuant thereto, the petitioner's claim was reconsidered and rejected by an order dated 5th April, 2013 observing *inter alia* that no relaxation can be considered.

Challenging the said order dated 5th April, 2013, the petitioner preferred an original application being O.A. No. 575 of 2013. By an order dated 17th July, 2018, the learned Tribunal quashed the order dated 5th April, 2013 and directed the respondents to re-examine the petitioner's claim. Thereafter, the petitioner's claim was again rejected by an order dated 13th September, 2018. Challenging the said order, the petitioner preferred an original application being OA No.350/01479/2018. By an order dated 3rd February, 2022, the original application was allowed and the order rejecting the petitioner's claim was quashed. Challenging the said order, the respondents preferred a writ petition being WPCT 78 of 2022. The Hon'ble High Court did not interfere with the order of the learned Tribunal in the said writ petition. The applicant/ writ petitioner herein thereafter preferred a Miscellaneous Application being MA 553 of 2022 praying for execution of the order dated 3rd February, 2022 passed in the original application being OA No.350/01479/2018. By an order dated 13th January, 2023, the learned Tribunal disposed of the miscellaneous application observing *inter alia* that '*this M.A for execution was filed on 05.08.2022, admittedly, before the order passed by the Hon'ble High Court. Since the Hon'ble High Court had extended the time limit for consideration of the case of the applicant for another 3 months, at this stage, we are disposing of this M.A with an*

expectation that respondents will adhere to the time limit granted for compliance of the order passed by the Tribunal’.

During pendency of the present writ petition preferred challenging the order of the learned Tribunal dated 13th January, 2023, the respondent no.4 has passed an order on 8th May, 2023 and a corrigendum memo dated 23rd August, 2023 again rejecting the petitioner’s claim.

Mr. Mandal, learned advocate appearing for the petitioner submits that the petitioner joined service in the post of Extra Departmental Agent (G.D.S Mail Carrier) on 23rd March, 1983 and continued till 25th August, 1999. On and from 26th August, 1999, he was regularised in the post of postman and thereafter he retired on 31st January, 2009. His minimum qualifying service for pension fell short of about 3 months and 24 days.

He argues that the issue of entitlement of the petitioner to avail pension has already been decided by the learned Tribunal. The order impugned therein had been quashed and upon arriving at a finding that the petitioner had been discriminated, the learned Tribunal directed the respondents to treat the petitioner as identically circumstanced with the persons referred to in the order and consider to grant identical benefits by passing an appropriate order. Such order has also been affirmed in the writ petition preferred by the respondents. As such, the respondents cannot reopen the issue of the petitioner’s

entitlement and deny grant of the benefits as extended to the persons identically placed with the petitioner.

Such contention of Mr. Mandal has, however, been disputed by Mr. Ray, learned advocate appearing for the respondents. According to him, the issue as to whether the petitioner is similarly situated with the persons referred to in the order dated 3rd February, 2022 was left to be considered by the authorities. Accordingly, such issue was duly considered and decided by the order dated 8th May, 2023 read with the corrigendum dated 23rd August, 2023 to the original order dated 8th May, 2023 issued by the respondent no.4. Reliance has been placed upon a judgment delivered in the case of *Union of India and Ors v. Gandiba Behera*, reported in (2021) 14 SCC 786. Let the order dated 23rd August, 2023 and the corrigendum dated 23rd August, 2023, as produced, be kept on record.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The learned Tribunal in its order dated 3rd February, 2022 specifically referred to the cases of the incumbents similarly situated with the petitioner, who had been granted the pensionary benefits upon condonation of the shortage of qualifying service and thereafter arrived at a categorical finding that similar treatment had not been extended to the petitioner whose qualifying service suffered a shortage of about 3 months 24 days.

The learned Tribunal categorically observed as follows:

‘The respondents have deliberately and very cleverly evaded response to the said instances. Discrimination and arbitrariness in denying identical benefit to the present applicant is palpable.

In such view of the matter, the Speaking Order is quashed and the matter is remanded back to the authorities to treat the applicant as identically circumstanced to the aforesaid applicants and consider to grant identical benefits, i.e., postal pension. Appropriate order shall be issued within 3 months.’

The said order dated 3rd February, 2022 was challenged in a writ petition by the postal authorities. The said writ petition being WPCT 78 of 2022 was disposed of by an order dated 21st September, 2022. In the said order the coordinate Bench discussed the entire facts, considered Rule 88 of the 1972 Rules and observed that *‘the learned Tribunal had remitted the matter to the authority to treat the present respondent as similarly circumstanced to the other applicants’*. Upon arriving at such specific finding the coordinate Bench did not interfere with the order of the learned Tribunal. The said order dated 21st September, 2022 has not been challenged by the respondents and as such the same had attained finality *inter se* the parties. In the said conspectus, the respondents cannot now reopen the issue of entitlement of the petitioner and deny the

benefits already disbursed in favour of the persons similarly situated with the petitioner.

The order dated 13th September, 2018 challenged in O.A.No.350/01479/2018 was passed, taking into consideration Rules 49, 88 of the 1972 Rules as well as the judgments delivered in the case of *Palanisami*. The learned Tribunal quashed the said order taking into consideration the judgment delivered in the case of *Union of India and Ors v. Gandiba Behera*, reported in (2021) 14 SCC 786. During pendency of the present writ petition, the respondent no. 4 had again passed an order on 8th May, 2023 reiterating the purported reasons contained in the earlier order dated 13th September, 2018. The order dated 13th September, 2018 has already been quashed by the learned Tribunal. As such, the order dated 8th May, 2023, cannot survive. In the order dated 8th May, 2023, not a single line was spent as regards the discrimination practiced, which was specifically noted in the order of the learned Tribunal dated 3rd February, 2022. To fill up such lacunae, the said respondent no.4 issued a purported corrigendum dated 23rd August, 2023 and sought to make out a case that *Md. Anisur Rahaman Sarkar's* case was treated as a special one and that the petitioner cannot be treated as similarly circumstanced with him. By the corrigendum dated 23rd August, 2023, the respondents have attempted to provide fresh reasons in support of the order dated 8th May, 2023. It is well settled that when a

statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise [See the judgment delivered in the case of *Mohinder Singh Gill and another – vs- The Chief Election Commissioner, New Delhi and others*, reported in *AIR 1978 SC 851*].

Such conduct of the postal authorities to reopen the issue of petitioner's entitlement to the benefits as extended to persons similarly situated, in our opinion is an act contrary to the specific findings of the learned Tribunal and the order of this Hon'ble Court. The denial of extension of identical benefits to the respondents is derogatory to the mandate of the Court and such action is unsustainable in law [See the judgment delivered in the case of *Manohar Lal (D) by Lrs. –vs- Ugrasen (D) by Lrs. & Ors.*, reported in *2010 (4) Supreme 519*].

The petitioner retired on 31st January, 2009 and for more than a decade, he has remained trapped in a purgatorial legal rigmarole, moving back and forth between the respondent authorities, the learned Tribunal and the High Court. Fairness and reasonableness are paramount issues for administrative action. As a model employer, the Government must conduct itself with high probity and candour and cannot act arbitrarily by withholding the benefits as extended to similarly situated incumbents [See the judgment delivered in the case of *The Madras Port Trust*

versus Hymanshu International by its Proprietor V. Venkatadri (dead) by L.R.S., reported in (1979) 4 SCC 176].

In our opinion, the order dated 8th May, 2023 and the corrigendum dated 23rd August, 2023, being derogatory to the order passed by the learned Tribunal as well as the order passed by the High Court are nullity in the eye of law. The said orders are, accordingly, set aside. Once the Court holds that the respondents have acted unreasonably, the Court itself can grant the relief and need not direct the petitioner to approach the authorities for reconsideration [See the judgment delivered in the case of *Government of India & Ors. versus B. Anil Kumar & Ors.*, reported in 2010 (4) Supreme 77].

The writ petition being WP.CT 78 of 2022 was disposed of on 21st September, 2022 extending the time towards compliance of the learned Tribunal's order by a period of three months. The said order was passed in the presence of the respondents and as such the extended period of three months expired on 21st December, 2023. On the date the impugned order was passed i.e. on 13th January, 2023, the time extended by the Hon'ble High Court had long expired. As such, the reasoning given by the learned Tribunal in not granting the relief as prayed for by the petitioner in the miscellaneous application is not acceptable to this Court.

In view thereof, the order dated 13th January, 2023 passed by the learned Tribunal in the Miscellaneous

Application being MA 553 of 2022 preferred by the applicant/ writ petitioner herein praying for execution of the order dated 3rd February, 2022 passed in the original application being OA No.350/01479/2018, is set aside and the respondents are directed to execute the order dated 3rd February, 2022 passed in the original application being OA No.350/01479/2018 condoning the short fall of service period of the petitioner up to the extent of minimum qualifying service for the purpose of granting pension and disburse all consequential benefits within a period of four weeks from the date of communication of the order to the respondents.

The writ petition being WPCT 57 of 2023 is, accordingly, disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)