

25.04.2023
DL-53
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 5747 of 2018

Tapas Adhikary & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Swarup Paul,
Mr. Guru Saday Dutta,
Mr. Anish Roy

...for the petitioners.

Ms. Angana Dutta

.....for WBTCCL.

The petitioners were appointed as Body Maintenance Fitters by the West Bengal Transport Corporation Limited (WBTCCL), formerly known as Calcutta Tramways Company (1978) Limited (CTC). After the initial training period, the petitioners were appointed to the regular posts of Body Maintenance Fitters with effect from August 1, 1996 and March 1, 1997. The petitioners were designated to the post of Welder by an office order dated August 28, 2009 since they were performing the job of Welders since 2004. The petitioners have prayed for implementation of the recommendation of 4th Pay Commission with effect from April 1, 2000 in terms of the memorandum dated April 12, 2005 issued by the Government of West Bengal. The said memo dated April 12, 2005 has also been approved by the Managing Director, CTC by an office order dated July 16, 2005. By the said order, posts of Welder, Gas Cutter-cum-Welder

and Gas Cutter were amalgamated to the post of Gas Cutter-cum-Welder and all the incumbents were required to do the same type of work as designated. Only the people who were willing to get themselves trained within a stipulated period of three months for getting a higher scale of pay were to receive the same commensurate to higher responsibility. Unless they trained themselves satisfactorily and performed their job satisfactorily, the incumbents would have to return back to the original lower scale of pay at such posts the company/corporation may decide.

It is the case of the petitioners that despite satisfactorily complying with the office order dated July 16, 2005, they have not still received the benefits of pay as recommended by the 4th Pay Commission with effect from April 1, 2000.

Mr. Paul, learned counsel appearing on behalf of the petitioners submits that RVWO 49 of 2016 has been disposed of and there is no impediment in granting the prayer in the writ petition.

Ms. Dutta, learned counsel appearing on behalf of the WBTCL submits that the post of a Fitter was different from the post of a Welder and the said post of Welder was a senior post compared to that of a Fitter. The said stance has been taken in the report-on-affidavit affirmed by the Chief Accounts Officer of the respondent/corporation on September 6, 2018

and this Court has no reason to disbelieve the averments made on affidavit.

The said report on affidavit has also not been controverted by way of an exception filed on behalf of the writ petitioners.

It is contended on behalf of the writ petitioners that there was no specific direction to bring an exception on record. There is no material on record to show that a prayer for filing of an exception was made to controvert the statements made in the Report-on-affidavit.

Considering the submissions of the parties and the materials placed on record, this Court is of the view that the recommendation of the 4th Pay Commission should be applicable to the employees working as Welders with effect from April 1, 2000 in the event they were working in the said post on or before April 1, 2000. This Court is of the view that such benefits should be applicable to the petitioners from August 28, 2009 as it is not inclined to accept the contention that since the original interview letter was for the post of 'Welder' in 1995 the petitioners are performing their duties in the same post and therefore the benefits were to be given from April 1, 2000. There are several documents annexed at pages 23, 24, 26 and 27 of the petition which evidence the fact that the petitioners completed their training as Body Maintenance Fitters and also

appointed/absorbed in the said posts. Furthermore, there is no contemporaneous document to show that there has been any challenge to the petitioners being designated as welders with immediate effect from August 28, 2009. The office memo dated July 16, 2005 was conditional. Benefits were to be disbursed upon fulfilment of certain conditions. It has not been averred since when such conditions were complied with. Therefore, this Court holds that the petitioners have been designated the post of welders since August 28, 2009.

In the light of the discussions above, the arrears of the benefits under the 4th Pay Commission shall be paid to the petitioners within 3 months from date along with interest thereon @ 6% per annum with effect from August 28, 2009 (being the date on which their job in the post of Welder was designated) till the date on which the actual disbursement is made by the respondent authorities.

In default of payment of such arrears or release of such interest, the rate of interest shall stand increased to 8% per annum.

With the directions aforesaid, **WPA 5747 of 2018 is disposed of.**

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)