

Dd 15 17.07.2023

WP.ST 42 of 2021

Dr. Raghunath Chattopadhyay
Vs.
The State of West Bengal & Ors.

Mr. Ranajit Chatterjee,
Mr. Aniruddha Mitra, Advocates
... .. For the Petitioner

Mr. Anirban Ray, GP
Mr. Biswabrata Basu Mallick, Advocates
... .. For the State

The writ petition is directed against an order dated April 2, 2019 passed in OA 1021 of 2018 by the West Bengal Administrative Tribunal.

By the impugned order, the prayer for grant of pensionary benefits to the writ petitioner was rejected by the tribunal on the ground that the writ petitioner resigned from his employment with the State and joined the National Dairy Development Board and the writ petitioner was unable to show whether he made any contribution towards pension funds as stipulated by the notification dated November 29, 1997.

Learned advocate appearing for the writ petitioner submits that, the writ petitioner applied for joining the National Dairy Development Corporation. The writ petitioner was working with the department of Animal Husbandry of Veterinary Service Department of the State of West Bengal. The writ petitioner was permitted to join the National Dairy Development Board. He refers to the notification dated November 29, 1977 by which, the Governor permitted him to join as Project

Executive Farmers' Organization & Animal Husbandry under the National Dairy Development Board, Anand, Gujarat. He refers to Rule 33 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and particularly to Rule 33 thereof. He submits that, the writ petitioner took subsequent appointment with proper permission. Therefore, the question of non-grant of pensionary benefits to the writ petitioner does not arise. He submits that the writ petitioner admittedly worked for 12 years 3 months and 25 days with the State Government.

Learned advocate appearing for the State draws the attention of the Court to the contents of the affidavit-in-opposition. He refers to the prayers made in the original application by the writ petitioner. He also refers to the letter dated May 3, 2017 by which, the State Government sought various information from the writ petitioner towards calculating his pensionary benefits. The writ petitioner by a letter dated August 8, 2018, stated that, he did not make any payment towards contribution in relation to leave salary and pension against his service. He expressed his willingness to pay such contribution.

Learned advocate appearing for the State refers to the notification dated November 29, 1977 and submits that, the writ petitioner was required to make contribution towards leave salary and pension which the writ petitioner did not make. Therefore, the writ petitioner was not entitled to the pensionary benefits.

The writ petitioner was initially working with the department of Animal Husbandry and Veterinary Service Department, Government of West Bengal. He applied through proper channel to participate in a recruitment process initiated by the National Dairy

Development Board for the post of Project Executive. Writ petitioner was granted permission to participate in such selection process. Writ petitioner participated therein. The writ petitioner was selected. Thereafter, the writ petitioner applied by a letter dated October 20, 1977 for release from the post. A notification dated November 29, 1977 was issued releasing the writ petitioner. The relevant portion of the notification of release dated November 29, 1977 as follows :-

"2. Leave salary and pension contribution of Shri Chattopadhyay will have to be borne either by the National Dairy Development Board or by him personally. Personally. The life of Shri Chattopadhyay, in the West Bengal Sub-ordinate Animal Husbandry SERVICE will remain valid for one year from the date of his release or till his confirmation under National Dairy Development Board, whichever is earlier."

Rule 33 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, states that a resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service. The writ petitioner does not fall in the proviso of sub-Rule (2) of Rule 33.

Apparently, subsequent to the writ petitioner joining to his new post with the National Dairy Development Board, he did not pay his contribution in terms of notification dated November 29, 1977. Therefore, he is not entitled to pensionary benefits subsequent to him joining his post with the National Dairy Development Board.

Moreover, the writ petitioner did not deposit leave salary and pension contribution for the 12 years 3 months 25 days of his services with the State also.

In such circumstances, we find that the writ petitioner is not entitled to any pensionary benefits since the writ petitioner himself did not comply with the requirement with respect of pensionary benefits during his period of service.

We find no ground to interfere with the impugned order.

WP.ST 42 of 2021 is accordingly **dismissed** without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)