

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Rai Chattopadhyay

W.P.S.T. 119 of 2013

Sisir Kumar Sen

VS.

The State of West Bengal & ors.

For the Petitioner : Mr. Rabin Gharai,
Ms. Soma Chakraborty
Advocates

For the State : Ms. Chaitali Bhattacharya
Sr. Government Advocate
Mr. Manas Kumar Sadhu

Hearing on : 03.07.2023

Judgment on : 03.07.2023

DEBANGSU BASAK, J.:-

1. The writ petitioner is aggrieved by the order dated May 17, 2012 passed by the West Bengal State Administrative Tribunal in O.A.3479 of 2008.

2. A number of applicants were before the Tribunal in O.A.3479 of 2008. Only the writ petitioner is aggrieved by the impugned order.

3. By the impugned order, the learned Tribunal did not find any error in the reasoned order dated October 29, 2007 negating the claim of the writ petitioner for New/Intermediate Selection Grade (N.I.S.G.) in the scale pay of Rs.370-10-415-535 (unrevised) plus other usual allowances as admissible as per rules with effect from April 15, 1977 to March 31, 1981.

4. Learned advocate appearing for the writ petitioner submits that, similarly situated and circumstanced employees as that of the writ petitioner were granted N.I.S.G. benefits. He draws the attention of the Court to an order dated August 30, 1990 passed in C.O. No.13144(W) of 1986. He submits that, the direction for grant of N.I.S.G. benefits to the writ petitioners there was acted upon by the State. The writ petitioner being similarly situated and circumstanced should be afforded the same benefits. In support of such contention he relies upon **(2008) 9 Supreme Court Cases 24 (Maharaj Krishan Bhatt And Another vs. State of Jammu and**

Kashmir And Others) and **AIR 1987 Supreme Court 820 (Abid Hussain and others vs. Union of India and others).**

5. Learned Senior Government Advocate appearing for the State draws attention of the Court to the contents of the reasoned order dated August 29, 2007. She submits that, the writ petitioner is required to satisfy the conditions of the Government Order No.6983-F dated October 3, 1975. She submits that, the writ petitioner received benefits of the Career Advancement Scheme (CAS) twice. A period less than four years was available from the date of superannuation for the writ petitioner to receive any other benefit. She submits that, the writ petitioner after availing of the CAS benefits is not entitled to N.I.S.G. benefits.

6. The writ petitioner approached the Tribunal by way of O.A.752 of 2006 which was disposed of by the Tribunal on July 24, 2006 requiring the authorities to consider and dispose of a representation made by the petitioner by a reasoned order after giving an opportunity to the writ petitioner being heard.

7. Authorities acted on such order dated July 24, 2006. The authorities gave hearing to the original applicants of O.A.752 of 2006 and passed an order dated August 29, 2007. The writ petitioner was one of the persons who was heard by the authorities and is governed by the reasoned order dated August 29, 2007.

8. The authorities passing the order dated August 29, 2007, took note of the cadre strength in which the writ petitioner was working at the material point of time. The authorities took note of the promotions and benefits given under the N.I.S.G. to the persons in the same cadre. The authorities took note of G.O. No.6983-F dated October 3, 1975. The authorities found the writ petitioner not to be fulfilling condition (iii) of the Government Order dated October 3, 1975 and therefore, not entitled to the N.I.S.G. benefits. Moreover, the authorities noted that the writ petitioner availed of C.A.S. benefits of 20 years of completion of service and a further C.A.S. benefit on completion of 25 years of service. The date of superannuation of the writ petitioner was taken into account to return a finding that four years of period of service was not left with the

petitioner and therefore, the writ petitioner was not fulfilling condition (iii) of the Government Order dated October 3, 1975.

9. The writ petitioner along with others approached the learned Tribunal challenging the reasoned order dated August 29, 2007 before the Tribunal being O.A. No.3479 of 2008 which was dismissed by the impugned order dated May 17, 2012.

10. The factual scenario so far as writ petitioner is concerned as noted in the reasoned order dated August 29, 2007 is not being disputed on behalf of the writ petitioner.

11. The writ petitioner joined as Lower Division Clerk on September 16, 1965 with his date of birth on January 12, 1943. He joined as Accounts Clerk on February 16, 1982 and was posted as Cashier-cum-Store Keeper pursuant to the order dated August 17, 1985. He joined as Cashier on September 19, 1985. He was afforded 20 years C.A.S. benefits with effect from April 1, 1989 and 25 years C.A.S. benefits with effect from April 1, 2007. He was found to be superannuated on January 31, 2003.

12. The fact that the claim of the petitioner is governed by Government Order No.6983-F dated October 3, 1975 is admitted at the bar. It is also admitted at the bar that, four conditions are required to be fulfilled by any individual to receive the benefits thereunder. Such four conditions are as follows:-

“(i) He has a good record and is fit for promotion as selection grade.

(ii) He has practically reached the maximum of his scales of pay.

(iii) He has left with only four (4) years of service before retirement.

(iv) He has not in his career earned any promotion or got any selection grade.”

13. It would appear from the factual matrix as adumbrated above, the writ petitioner does not fulfil condition (iii) of the Government Order No.6983-F dated October 3, 1975. One of the grounds for rejection of the representation of the writ petitioner is non-fulfilment of condition (iii).

14. **Maharaj Krishan Bhatt and another (supra)**, considers a case where, extension of benefit to similarly situated person was noted and granted. In the facts of the present case, the writ petitioner did not establish himself to be similarly situated or circumstanced as that of the other writ petitioners who were afforded the benefits by the High Court in the order dated August 30, 1990. Such order, however, does not allude to any of the factual matrix as to the entitlement of the writ petitioners therein. Therefore, it would be presumptuous on the part to consider the writ petitioner as similarly situated circumstanced as that of the writ petitioners in C.O.13144(W) of 1986.

15. The ratio of **Abid Hussain and others (supra)**, in our humble view are not attracted in the facts and circumstances of the present case. There an issue of overtime allowance for extra duty was involved. Benefit of such order was extended to all employees who retired and did not retire standing as that of the petitioner was granted. Again, the writ petitioner before us cannot obtain the benefit of the High Court's order dated August 30, 1990 passed in C.O.13144(W) of 1986 without

establishing that the present writ petitioner is similarly situated and circumstanced as that of the writ petitioners involved in the other writ petition.

16. In view of the discussions above, we find no material irregularity in the impugned order of the Tribunal warranting our interference.

17. In such circumstances, **W.P.S.T.119 of 2013** is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

18. I agree.

(Rai Chattopadhyay, J.)