

Dd 23 05.07.2023

WP.ST 169 of 2011

**Soumen Kumar Bhattacharjya
Vs.
The State of West Bengal & Ors.**

Mr. D. N. Ray,
Ms. Munmun Tewary,
Mr. Rajesh Kr. Shah, Advocates
... ... For the Petitioner

Mr. Tapan Kr. Mukherjee, AGP
Ms. Tuli Sinha, Advocates
... ... For the State

1. The writ petition is directed against an order dated April 7, 2011 passed in OA 2789 of 2005. By the impugned order, learned tribunal, granted protections so far as overdrawl is concerned. Learned tribunal, however, refused to interfere with the impugned Government Order dated September 22, 2005 by which, pay of the writ petitioner was re-fixed.

2. Learned advocate appearing for the writ petitioner submits that the writ petitioner was in service with Airforce till 1993. The petitioner participated in a selection process initiated in May, 1995 for the post of Platoon Commander (GD & TRG) of West Bengal National Volunteer Force. He submits that, an appointment letter dated November 6, 1995 was issued to the writ petitioner. Pursuant to such appointment letter, the writ petitioner was discharging his duties till his superannuating on October 31, 1993.

3. Learned advocate appearing for the writ petitioner draws the attention of the Court to the impugned Government Order dated September 22,

1995. He submits that, by such Government Order, the authorities purported to revise the pay of the writ petitioner. He submits that the authorities could not do so. He points out that, pay fixation was sought to be done on the basis of a memo of the Finance Department dated September 14, 1995. Such memo was issued subsequent to the initiation of the selection process in May, 1995. According to him, the rules of the game cannot be changed subsequent to the commencement of the selection process. He submits that, the tribunal erred in not directing the pay granted to the writ petitioner pursuant to the appointment letter dated November 6, 1995 read with pay fixation memo dated April 29, 1997 be paid to the writ petitioner. He submits that, the writ petitioner is presently receiving provisional pension without receiving of the entirety of the retrial benefits.

4. State is represented.

5. There exists a memorandum of the Finance Department dated September 22, 1995 governing the field of fixation of pay of military pensioners re-employed in the State Government service. It lays down as follows :-

"(2) a. Re-employed Military pensioners shall be allowed to draw pay in the prescribed scale of pay of the post in which they are re-employed. No protection of the scale of pay of the post held by them prior to retirement shall be given.

b. i/In all cases where the pension is fully ignored in terms of Note-I below rule 83(2) of WBS(D.C.R.S) rules, 1971 as amended vide Finance Deptt. Notification No. 7870-F, dt. 4.3.90, the initial pay on re-employed shall be fixed at the minimum of the sale of pay of the re-employed post.

ii/In cases where the entire pension is not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage in

the scale of pay of the re-employed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post and Note-I below rule 82(2) of W.B. S.(DCRB) Rules, 1971 a amended vide finance Deptt. Notification NO. 7870-F dt. 4.8.90 shall be reduced from the pay so fixed "

6. The Memo dated September 22, 1995 states that such memo will take effect from August 1, 1995 and shall be applicable in cases of re-employment of ex-servicemen in civil posts on or after August 1, 1995. Appointment of the writ petitioner is, therefore, subsequent to the Finance Department Memo dated September 14, 1995 with the same coming into effect on August 1, 1995. Writ petitioner was appointed on November 6, 1995 being the date of his appointment letter. Initial pay fixation so far as the writ petitioner was concerned was granted on April 21, 1995. It proceeded on the basis of the last pay drawn by the writ petitioner in his service as defence personnel. The Finance Department Memo dated September 14, 1995, however, prescribes an ex-serviceman shall be entitled to draw pay in the prescribed scale of pay for the post in which they are re-employed.

7. The post at which, the writ petitioner was re-employed by the State Government carried a different pay grade. It was lower than the last drawn pay by the writ petitioner as a defence personnel.

8. This anomaly was detected subsequently and a Government Order dated September 22, 1995 was issued. Such Government Order was made the subject matter of challenge before the West Bengal Administrative Tribunal in OA 2789 of 2005. Such

Original Application was disposed of by the impugned order dated April 7, 2011. The tribunal granted protection so far as the overdrawl is concerned.

9. No doubt, the writ petitioner overdrew salary taking into account the Finance Department Memo dated September 14, 1995.

10. The writ petitioner is entitled to the scale of pay at which he was re-employed by the State Government.

11. As noted above, writ petitioner was issued the appointment letter on November 6, 1995 after the Finance Department Memo dated September 14, 1995 giving effect to from August 1, 1995. Therefore, it cannot be said that the rules of the game were changed so far as the writ petitioner is concerned, subsequently.

12. In such circumstances, we find no merit in the present writ petition. However, in our view, interest of justice would be subserved by continuing with the overdrawal protection that the tribunal afforded to the writ petitioner. Moreover, the authorities will disburse all pensionary benefits that the writ petitioner is entitled to taking into consideration the memo dated September 22, 1995 and the overdrawl protection granted, within a period of four weeks from date.

13. WP.ST 169 of 2011 is **disposed of** accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

