Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 93 of 2019

Partha Dey & ors.
Vs.
The State of West Bengal & ors.

For the writ petitioners : Mr. Sandeep Sanyal, Advocate
Mr. Sukanta Das, Advocate
Mr. Chandrachur Lahiri, Advocate

For the State : Mr. Tapan Kr. Mukherjee,
Sr. Advocate & A.G.P.
Mr. Pinaki Dhole, Advocate,
Ms. Tuli Sinha, Advocate

Hearing on : 04.09.2023

Judgment on : 04.09.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated January 8, 2019 passed in O.A.956 of 2014 by the West Bengal Administrative Tribunal.

2. By the impugned order, the Tribunal, negated the claim for retiral benefit of the writ petitioner.

3. Learned advocate appearing for the writ petitioners submits that, the father of the writ petitioners was initially appointed as a part time Lecturer of a Homoepathic Medical College and Hospital on September 25, 1972. He was made permanent on June 27, 1973. He was superannuated on March 1, 1991. After attaining the age of superannuation, the father of the writ petitioners was reemployed by the Department of Health & Family Welfare for the period from March 2, 1991 to February 29, 1996.

4. Learned advocate appearing for the writ petitioners submits that, the college was sought to be acquired under the provisions of the Midnapore Homoepathic Medical College and Hospital (Take Over of Management and subsequent Acquisition) Act, 1984. The notification under Section 3 of 1984 Act was issued on April 10, 1985. In breach of the provisions of Section 4 of the Act of 1984, acquisition notification was not issued within the period of five years of the take over notification but was issued thereafter, on March 30, 1993. The father of the writ petitioners should be treated as a government employee and retiral benefits should be granted for duties discharged by him on and from September 25, 1972 till his superannuation on March 1, 1991.

5. Learned advocate appearing for the writ petitioners relies upon **(2007) 9 Supreme Court Cases 274 (Shiv Dass versus Union of India**

and others) and **(2008) 8 Supreme Court Cases 648 (Union of India and others versus Tarsem Singh)** and submits that, nonpayment of retiral benefit is a continuing wrong and therefore, question of limitation does not arise. Moreover, at best the claim of the writ petitioners can be restricted to three years prior to the date of approaching Tribunal.

6. Learned Senior Advocate appearing for the State draws the attention of the Court to the provisions of Section 21 of the Administrative Tribunal Act, 1985. He submits that, the period of limitation prescribed is one year from the date on which the final order was made. In the facts of the present case, he submits that, the cause of action of the father of the writ petitioners arose on March 1, 1991. The father of the writ petitioners approached the Tribunal in 2014 and therefore, the approach was barred under Section 21 of the Act of 1985.

7. In the facts of the present case, the father of the writ petitioners was initially appointed as a part time Lecturer in the Medinapore Homoeopathic Medical College and Hospital on September 25, 1972. He was made a permanent Lecturer on June 27, 1973. He superannuated on March 1, 1991.

8. The College at which he was working as a permanent Lecturer was sought to be take overunder the provisions of the Act of 1984 by issuance of a notification under Section 3 thereof being April 10, 1985. The acquisition notification was issued on March 30, 1993. In the facts of the present case, the fact that there was delay in issuance of an

acquisition notification subsequent to the issuance of a notification under Section 3 of the Act of 1984 is established. The father of the writ petitioners superannuated on March 1, 1991. Assuming that he is to be considered as a government employee then also, he was required to ventilate his grievances before an appropriate forum within one year from March 1, 1991. He approached the Tribunal in 2014.

9. Section 21 of the Act of 1985 prescribes the period of limitation for approaching the Tribunal. It prescribes a period of one year from the date when, the authority passed the final order. Sub-section (2) of Section 21 of the Act of 1985, however, allows the Tribunal to admit an Original Application filed beyond the prescribed period of one year in the event, the applicant satisfies the Tribunal that the applicant was prevented by sufficient cause from not making the application within the prescribed period of one year.

10. **Shiv Dass (supra)** considers the issue of delay and laches in approaching the High Court under Article 226 of the Constitution of India. It is of the view, that, normally belated approach to the Writ Court is not entertained. Delay or laches is one of the factors which is taken into consideration by the Writ Court in exercising discretionary powers. In the facts of that case, the writ petitioner therein approached the High Court for disability pension. The writ petitioner therein was out of service in 1983 and filed writ petition in 2005. In such circumstances, the Supreme Court held that in case of pension, the cause of action accrues

and continues from month to month. However, delay in filing the petition should not be overlooked. It went on to say that if the petition is filed beyond the reasonable period of three years normally Court should reject the same and restrict the relief which could be granted to a reasonable period of three years. In the peculiar circumstances, the Supreme Court remitted the matter to the High Court to hear the writ petition on merits.

11. In **Tarsem Singh (supra)** the Supreme Court was again faced with a writ petition concerning disability pension. The respondent therein was out of service from November 13, 1993 and approached the Tribunal in 1999 seeking disability pension. It notices various authorities of the Supreme Court on the aspect of delay and laches including **Shiv Dass (supra)**. It observes as follows:-

> **"7.** *To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is*

> *an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.*"

12. In **Tarsem Singh (supra)**, the Supreme Court directed the claim to be restricted to three years before the date of the filing of the writ petition.

13. In the facts of the present case, the father of the writ petitioners superannuated on March 1, 1991. He approached the Tribunal in 2014 for retiral benefits which includes pension.

14. The father of the writ petitioners would therefore be entitled to pensionary benefits for the period commencing from three years prior to the date of his approach to the Tribunal, if at all he is entitled to pensionary benefits which we will immediately consider.

15. The father of the writ petitioners was admittedly working as a permanent Lecturer at the Midnapore Homoeopathic Medical College and Hospital which was taken over and acquired under the provisions of the Act of 1984 by the State.

16. The take over and acquisition modalities under the Act of 1984 prescribed is two tier. Section 3 of the Act of 1984 provides for the take over of management of the institution and Section 4 provides for acquisition of the institution. Section 3 and Section 4 of the Act of 1984 are as follows:-

> ***"3. Taking over of management of the institution.-*** *(1) The State Government shall, by order published in the Official Gazette, take over the management and control of the institution.*
>
> *(2) An order made under sub-section (1) shall remain in force for a period of five years from the date of its publication in the Official Gazette or, in the case of acquisition of the institution under Section 4, till the date of such acquisition, whichever is earlier.*

4. Acquisition of the institution.- *(1) The State Government may, if it so thinks fit, at any time within the period of five years referred to in sub-section (2) of section 3, acquire the institution by notification.*

(2) On and from the date of the notification referred to in sub-section (1) (hereinafter referred to as the date of vesting).-

(i) the institution shall stand transferred to, and vest absec-lutely in, the State Government, free from all encum-brances;

(ii) the institution shall be run by the State Government as a State institution;

(iii) any contract, whether expressed or implied, or other arrangement, whether made under any statute or otherwise, in relation to the management of any property or other affairs of the institution, and in force immediately before the date of vesting shall be deemed to have terminated on and from the date of vesting;

(iv) every person (not being a part-time or over-aged employee) who has been an employees of the institution before the date of vesting shall, on and from the date of vesting, become an employee of the State Government and shall hold office on the same terms and conditions as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the State Government is duly terminated or until the terms and conditions of his service are duly

> *altered by the State Government by rules made in this behalf;*
>
> *Provided that the services of every person who expresses his unwillingness to continue in service in terms of the provisions of this clause shall stand terminated with effect from the date of vesting or from any other date to be notified by him;*
>
> *(v) notwithstanding anything contained in any law for the time being in force or in any contract, custom or usage, to the contrary, the transfer of the service of any employee of the institution to the service of the State Government shall not entitle such employee to any compensation on any account whatsoever and no claim in this behalf shall be entertained by any court, tribunal or authority.*"

17. In the facts of the present case, take over notification under Section 3 of the Act of 1984 was issued on April 10, 1985. Under the provisions of sub-section (1) of Section 4 of the Act of 1984, acquisition of the institution is to be made within a period of five years referred to under sub-section (2) of Section 3. Sub-section (2) of Section 3 allows an order made under sub-section (1) of Section 3 to remain in force for a period of five years from the date of publication in Official Gazette or in case of acquisition of institution under Section 4 till the date of such acquisition, whichever is earlier. In the facts of the present case, notification under sub-section (1) of Section 4 for acquisition of

institution was issued on March 30, 1993 which is beyond the prescribed period of five years under Section 3 of the Act of 1984.

18. If the acquisition is to remain valid it was required to be made within five years from the date of publication of the notification under Section 3 of the 1984. Five years from April 10, 1985 would mean Apirl 9, 1990. The father of the writ petitioners was in employment as a permanent Lecturer at the Medical College and Hospital on such date. The father of the writ petitioners was therefore to be considered as an employee by operation of law under the Act of 1984. State cannot be allowed to take benefit of its laches. It did not require the institution within the prescribed period of five years from the date of take over. If it did so then the father of the writ petitioners was an employee of the State on the date of the acquisition with all attendant benefits.

19. In such circumstances, we find that the father of the writ petitioners was entitled to retiral benefits as a permanent Lecturer of the institution on his superannuation on March 1, 1991. He however, did not claim for his retiral benefits till 2014 when he approached the Tribunal.

20. Therefore, the State authorities will consider grant of retiral benefits of the father of the writ petitioners, with his pension commencing from three years prior to the date he approached the Tribunal for his retiral benefits. It is clarified that, the claim for pensionary benefits is only limited for the period of three years from the

date he approached the Tribunal. Other retiral benefits, are to be paid to the father of the writ petitioners in full in view of the fact that the State authorities are trustees of the retiral benefits of the father of the writ petitioners, if there be any, subsequent to the take over and acquisition of the institution under the provision of Act of 1984.

21. With the aforesaid observations, we **dispose of WP.ST 93 of 2019** without any order as to costs.

(Debangsu Basak, J.)

22. I agree.

(Md. Shabbar Rashidi, J.)

CHC