03.08.2023
DL-176
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18066 of 2017
with
CAN 3 of 2020

Ashoke Kumar Ganguli
Vs.
The Union of India & Ors.

Mr. Amal Kumar Mukhopadhyay,
Ms. Anindita Banerjee,
Ms. Tithi Mazumder,
Mr. Debopriya Chakraborty,
Mr. Palash Kanti Chakraborty
.....for the petitioner.

Mr. Jagannath Ganguly
....for the respondents.

The petitioner was working as an Attendant with the Bureau of Indian Standards (in short "BIS"), Eastern Region Office since 1984. The petitioner was served with a charge sheet on November 19, 2008. The departmental proceedings that were initiated ended in an order of penalty on August 29, 2016. A statutory appeal was preferred by the petitioner. The statutory appeal was kept pending for a long time. The petitioner was compelled to file a writ petition, being WP 10978 (W) 2017. The said statutory appeal was directed to be disposed of within a specific time frame. Before the statutory appeal disposed of an order of premature retirement was passed against the petitioner under the provisions of Rule 48 of the

Central Civil Service (Pension) Rules, 1972 by the Director General of BIS on June 30, 2017.

In the instant writ petition, the petitioner has challenged the impugned order dated June 30, 2017. A Coordinate Bench of this Hon'ble Court granted an order of stay on July 13, 2017. The Coordinate Bench was of the opinion that unless the respondent authorities were restrained from giving effect to the impugned order dated June 30, 2017, the instant writ petition would become infructuous.

The said order of the Coordinate Bench was challenged before the Hon'ble Division Bench by the authorities by filing MAT 1350 of 2017. The Hon'ble Division Bench dismissed the said appeal. The Hon'ble Division Bench on December 22, 2017 held that not only was the balance of convenience and/or inconvenience was in favour of the petitioner but also the fact that there were irregularities on the part of the respondents authorities have been considered by the Coordinate Bench while passing the aforesaid interim order. Thereafter, the petitioner joined his service. However, despite joining his service for more than one and a half months, the respondent authorities failed to disburse the salary and allowances of the petitioner. In an application filed by the petitioner, being CAN 11245 of 2017, the Hon'ble

Coordinate Bench directed the salary and allowances of the petitioner to be paid from January, 2018 by February 15, 2018. Thereafter, the salary of the petitioner was required to be paid month by month from February, 2018. The petitioner during the pendency of the writ petition has retired from service upon reaching the age of superannuation on December 31, 2021.

Now, it is agitated by the writ petitioner that the retiral dues of the petitioner including the payment of gratuity amount has been made by taking the sum of Rs.31,500/- as his basic pay. Such basic pay was payable to the petitioner on June 30, 2017, on the date of his compulsory retirement. The retiral dues of the petitioner has been also paid till June 30, 2017, the date of his compulsory retirement. On the date when the petitioner was actually retired in December, 2021, his basic pay was stipulated at Rs.36,500/-.

Therefore, it is argued on behalf of the petitioner that the said basic pay should have been taken into consideration for disbursal of the retiral benefits of the petitioner. Furthermore, the petitioner has not been granted the Modified Assured Career Progression (MACP) benefits since 2008. The petitioner has prayed for such enhancement/benefits under the MACP Scheme. The petitioner has also prayed for applicable promotional benefits.

On January 30, 2023, it was submitted on behalf of the respondent authorities that since the petitioner's Annual Performance Appraisal Reports (APARs) were not in accordance with the standard required by the employer, the petitioner's increments/MACP benefits were withheld by the employer. Non-satisfactory performance of the petitioner was also one of the reasons for compulsory retirement of the petitioner.

Upon perusal of the documents annexed to the affidavit-in-opposition, this Court found that no APARs were produced with the affidavit-in-opposition.

Therefore, this Court directed an additional Report-on-Affidavit to be filed on behalf of the respondent authorities to bring on record the APARs to assess the arbitrariness or perversity in the decision making process of the employer. Time to file the said additional Report-on-Affidavit was again extended on July 6, 2023.

Now, it is submitted on behalf of the employer that no such APARs can be brought on record by way of an additional Report.

Considering the submissions of the parties and the materials placed on record, this Court is of the view:

a) A material irregularity was committed by the employer by passing the order of compulsory retirement on June 30, 2017 when statutory appeal was pending.
b) The employer again sought to harass the writ petitioner by not paying the salary of the writ petitioner since his reinstatement pursuant to an order passed by the Coordinate Bench.
c) After the petitioner was reinstated and allowed to continue with his service till the date of superannuation the basic pay paid to the petitioner as on December 31, 2021 should have been taken into account for calculation of the pensionary and other retiral benefits of the petitioner. The date of retirement should have been taken to be December 31, 2021 and not June 30, 2017.
d) The petitioner should have also be given the benefits of MACP Scheme from 2008 onwards.
e) This Court is not willing to consider the promotional benefits of the petitioner since the petitioner has no right to promotion and can only be considered for promotion which could not be done by the respondent/employer due to the pendency of the disciplinary proceedings.

In the light of the discussions hereinabove, this Court directs the employer to pay the differential amount of the retiral benefits along with the MACP benefits to the petitioner within a period of 3 months from date taking December 31, 2021 to be the date of superannuation.

The said differential amount of retiral benefits will be paid along with interest @ 6% per annum computed from July 1, 2017 till such date the entirety of the arrears of differential amount are disbursed to the petitioner.

With the directions aforesaid, **WPA 18066 of 2017** is **disposed of**.

CAN 3 of 2020 is an application for expeditious disposal of the writ petition and direction upon the respondent authorities to disburse the remaining service benefits of the writ petitioner.

Since the main writ petition has been heard and disposed of **CAN 3 of 2020** is **dismissed as infructuous**.

Later:

A prayer for stay on the interest amount directed to be paid to the petitioner is made on behalf of BIS.

Such prayer is considered and refused.

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.**)