Item-21. 19-09-2023

sg Ct. 8

MAT 1340 of 2022
CAN 2 of 2022

Dr. Asit Kumar Chongdar & Ors.
Versus
Union of India & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr.Rananeesh Guha Thakurta, Adv.
Ms. Senjuti Sengupta, Adv.
…for the appellants
Ms. Susmita Saha Dutta, Adv.
…for the respondent nos.1&3
Mr. Subrata Mukhopadhyay, Adv.
Ms. Basabi Raichoudhury, Adv.
…for the respondent nos.4-6

1. Affidavit of service filed in Court today is taken on record.
2. The appeal is arising out of an order dated 8th July, 2022 in which the writ petitioners had prayed for a direction upon the respondent authorities to release pensionery benefits to the petitioners at rates of 1st respondent (i.e. the Union of India) with effect from 4th March, 2014.
3. The stumbling block appears to be that the writ petitioners have retired prior to 4th March, 2014 when the National Institute of Technology, Science, Education, Research Act, 2007 came into operation. It was published on 5th March, 2014 and received assent of the President on 4th March, 2014. The said Act reads with the First Statute of Indian Institute of Engineering Science and Technology, 2017 specifying the categories of employees who would be entitled to provident fund and pension schemes are to read together in order to ascertain rights of the writ petitioners.
4. The amended clause 5A of the Act of 2014 makes it clear that on or after the commencement of the said Act i.e. 4th

March, 2014, every person who is employed in the Bengal Engineering and Science University, Shibpur became an employee of Indian Institute of Engineering Science and Technology, Shibpur and shall hold his office or service by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of the commencement of the National Institutes of Technology, Science, Education and Research (Amendment) Act, 2014. However, this Act was not given retrospective effect.

5. Mr. Bikash Ranjan Bhattacharyya, learned Senior Counsel, appearing on behalf of the appellants has submitted that, notwithstanding such amendment, the case of the petitioners is required to be considered under Clause 28 (ii and iii) of the First Statute. Clause 28 of the First Statute is reproduced below:

> *"28. Provident fund and pension schemes. – The Central Government shall assume the liability of pension in respect of those employees who retired after conversion of erstwhile Bengal Engineering and Science University to the Institute and after takeover, the existing employees of the Institute shall be given options regarding their service conditions and accordingly the pension liabilities shall be as under:*
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> *(i) The liability for payment of existing pensioners covered under State Pension Rules shall continue to be on the State Government. However, the liability for payment of pension for such employees who shall superannuate after the date of conversion of Bengal Engineering and Science University to the Institute will vest on the Central Government;*

(ii) Employees recruited before 1st January, 2004 who opt for Central Government administered pension scheme shall be governed by the Central Civil Services (Pension) Rules, 1972 and if they opt for the existing pension Scheme, i.e., State Government Pension Scheme shall be governed by the said provisions;

(iii) Employees recruited on or after 1st January, 2004 and before 4th March, 2014 who opt for Central Government administered Pension Scheme shall be governed by the New Pension Scheme and if they opt for the State Government Pension Scheme shall be governed by the said provisions; and

(iv) Employees recruited after 4th March, 2014, i.e. the date of conversion of the Bengal Engineering and Science University to Institute shall be governed by the New Pension Scheme."

6. This point was not considered by the learned Single Judge nor by the authorities who have decided the said issue. It may be that the said issue was not raised in the manner now raised in the appeal. Mr. Bhattacharyya has also emphasized that persons similarly placed have been extended with similar benefits and in this regard, he has referred to the communication from the office of the Indian Institute of Technology, Roorkee dated 23rd March, 2017 and also a commination to the CPIO, NIT Durgapur dated 11th April, 2017 to show that persons similarly placed have received such benefit and persons who have retired from service from the erstwhile RE College, Durgapur and before conferment of the status of NIT by the Government of India have received pension at revised rates as per recommendation of the Central Pay Commission.

7. The learned Single Judge has denied the relief on the basis of the clear mandate in Section 5A(d) of the National Institutes of Technology, Science Education and Research Act, 2007. However, in the event they were not receiving benefits that are admissible to them under the First Statute, it is needless to mention that they should be extended to them immediately.
8. The learned Counsel for the Union of India has submitted that they are receiving benefits under clause 28. It is submitted that Rule 28 (ii and iii) applies only to employees in service and not who have retired. It is submitted that the respondent no.4, being Indian Institute of Engineering Science and Technology is an autonomous body and as an autonomous body, it is bound by its Statute and any decision taken by any other autonomous body cannot be binding on the respondent no.4.
9. The learned Single Judge has arrived at a finding on the basis of the interpretation of clause 5A. However, in view of the fact that few documents disclosed would show that same benefits have been given to the employees of other Institutes that are taken over by the Central Government by virtue of National Institutes of Technology, Science Education and Research Act, 2007 and those were not considered in the impugned order and there must be a uniformity with regard to the employees similarly placed, we direct the Secretary,

Ministry of Human Resources Development to revisit the said issue and take into consideration the documents on which the appellants are relying and would like to rely at the time of consideration.

10. We permit the appellants to make a detailed representation along with all relevant documents within two weeks form date.

11. The Secretary shall decide the matter within a period of four weeks thereafter after giving an opportunity of hearing to the petitioners and shall pass a reasoned order on consideration of the materials to be produced by the parties in this regard and all materials that are relevant in deciding the said issue.

12. We also permit the respondent no.4 to make appropriate representation as they have recommended the case of the writ petition.

13. The impugned order is set aside. The appeal and the application are allowed and stand disposed of with the above direction.

14. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Prasenjit Biswas, J.) **(Soumen Sen, J.)**