

22.06.2023

DL-48

Sws.M

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19789 of 2022

Mrinal Kanti Dutta

Vs.

The State of West Bengal & Ors.

Mr. Mahadeb Ghosh,
Mr. Nandadulal Bandopadhyay,
Mr. Pritam Ghosh

.....for the petitioner.

Mr. Bhaskar Prasad Vaisya,
Mr. Nilay Baran Mondal

....for the respondent nos.2 to 4.

The writ petitioner has prayed for payment of benefits under the 3rd Career Advancement Scheme (CAS) and fixation of pay along with the benefits of 3rd CAS.

Mr. Ghosh, learned counsel appearing on behalf of the petitioner submits that the petitioner has been given the benefits of the 2nd CAS with effect from August 22, 2003. The petitioner was appointed in Scale No.9 on August 22, 1987. The petitioner got the benefits of the 1st CAS in 1994 in Scale No.14 after completing 8 years of service. The petitioner got the benefits of 2nd CAS with effect from August 22, 2003 in Scale No.16 after completion of 16 years of service. Despite completing 25 years of service on August 22, 2012, the petitioner has not been given

the benefits of the 3rd CAS. He submits that despite the petitioner being entitled to 2nd CAS benefits with effect from August 22, 2003, he has been disbursed the same with effect from December 18, 2012. Therefore, he prays for arrears on the 2nd CAS benefits.

He further submits, that for removing the anomalies which prevailed with regard to the payment of CAS benefits, the office order dated December 18, 2012 was issued by the Managing Director, West Bengal Cooperative Milk Producers' Federation Limited (WBCMPFL).

The said 2012 order clearly records that the Automatic Switch Over (ASO) policy has been replaced by the rules and regulations of the Government in toto with effect from January 1, 2006 with certain provisions. The said order dated December 18, 2012 came into force to remove the inconsistencies that existed in respect of the earlier orders on the basis of the 2006 policy. It clearly appears from the said order, that the staff whose names were mentioned therein including the petitioner, would get the benefits as detailed in the schedule given therein. The dates of effect of ASO/CAS/fixation benefits were also provided in the said order.

Mr. Vaisya, learned Government Advocate appears on behalf of WBCMPFL and submits that the petitioner is not entitled to the benefits of the 3rd CAS relying on an office order dated March 21, 2006 issued by the Managing Director, WBCMPFL. He draws the attention of this Court to Clause 8.1(d) of the said office order. Clause 8.1(d) is reproduced hereinafter:-

“The employee appointed to a post in any of the revised scale no.13 to 16 will get the benefit of CAS after completion of eight or sixteen years of continuous and satisfactory services as per the CAS. He will not be entitled to any further benefit under this scheme.”

He submits that since the petitioner was initially appointed in Scale No.9 and thereafter his scale was revised to Scale No.16 under the 1st CAS and Scale No.16 under the 2nd CAS, he is not entitled to the benefits of 3rd CAS as the same is specifically debarred under Clause 8.1(d) of the office order dated March 21, 2006.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the office order dated December 18, 2012 passed by the Managing Director, WBCMPFL shall prevail over all the other previous office orders. The office order dated December 18, 2012 came into

effect on December 1, 2012. The same has received the Board's approval on December 17, 2012. The 2012 office order has been issued in order to remove all the anomalies with regard to payment of WBSR/CAS benefits to the employees of the WBCMPFL. The 2012 office order clearly records the date from which the 3rd CAS benefits are payable to the petitioner.

This Court is of the view that there is no inconsistency in the office order dated December 18, 2012 and the language of the same is not equivocal. Therefore, this Court is unable to accept the submission made on behalf of the respondents that the office order dated March 21, 2006 should prevail over the office order dated December 18, 2012.

In the light of the discussions above, this Court directs payment of the arrears of the 2nd CAS benefits from August 22, 2003 till December 18, 2012 along with interest @ 6% per annum.

In the event the said arrears have already been disbursed, in totality or in part, the respondents will be entitled to deduct the same from the amount payable to the petitioner, if any.

The petitioner will also be entitled to the actual benefits of the 3rd CAS with effect from December 1, 2012, notional benefits with effect from March 17,

2011 (date on which he was entitled to 3rd CAS benefit). The fixation of pay of the petitioner will be made after the benefits of the 3rd CAS is granted to the petitioner. The petitioner will be entitled to arrears of 3rd CAS benefits from December 1, 2012 till the date of the actual disbursement of the same. The same should be disbursed within a period of 3 months from date along with interest @ 6% per annum. Upon pay fixation of the petitioner in accordance with the 3rd CAS benefits, the petitioner will be entitled to the same month by month starting 10th August, 2023. Payment will be made within the 10th of each succeeding month.

With the directions aforesaid, **WPA 19789 of 2022** is **disposed of**.

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.)