

11.01.2023

WPST 111 of 2022

Court : 04
Item : 20
Matter : WPST
Status : DO
Transcriber: NANDY

Tripti Sarkar nee Mallick
Vs.
The State of West Bengal & Ors.

Mr. Asim Kumar Niyogi, Advocate
Mr. Vaskar Pal, Advocate

.....for the Petitioner

Mr. Sk. Mujibar Rahaman, Advocate
Ms. Benazir Ahmed, Advocate

.....for the State

The writ-petition arises from an order dated 19.09.2019 passed by the West Bengal Administrative Tribunal in OA 1133 of 2016 whereby and whereunder an application filed by the petitioner challenging the order of Special Secretary, Finance Department (Law Cell), Government of West Bengal, was dismissed.

Admittedly, the writ-petitioner joined service as Lower Division Clerk (LDC) at a pay-scale of Rs.(230-425)/- on 29.03.1971 and was extended the benefit of increments during her service career. Subsequently, New Intermediate Selection Grade (NISG) was introduced and since the petitioner completed ten years of service as 'Mohourrir', was allowed NISG pay scale of LDC with effect from 07.11.1976 in terms of the Government Order passed in this regard. It was subsequently detected that one Samir Kumar Mondal was granted higher scale of pay at such post whereas the writ-petitioner was being granted the lower scale of pay though senior in gradation list, the dispute was raised for pay parity.

By order dated May 12, 1995, issued by the office of the District Magistrate & Collector, Hooghly, Government of West Bengal, the petitioner was extended the benefit of pay protection subject to the condition that the moment the benefit of NISG is taken away from the said Samir Kumar Mondal, who was admittedly junior in the gradation list, the

said pay protection shall be withdrawn. Astonishingly, the respondent-authority decided to withdraw the benefit of such pay-protection which led the writ-petitioner to move the Tribunal. The order of the Special Secretary, Finance Department (Law Cell), Government of West Bengal, would reveal that such withdrawal was secured because of the withdrawal of the benefit of the pay scale extended to Sambhu Nath Ghosh and Mohan Lal Sarkar.

We are not been informed that the aforesaid two persons have taken any steps against the decision. The Tribunal was of the view that since the benefit of pay-protection was a conditional one and the moment the NISG has been withdrawn which was extended to the aforesaid two persons, the writ-petitioner is not entitled to benefit of such pay party. There is a fundamental error in the decision of the said authority and the Tribunal have simply proceeded on the *ipse dixit* of the reasons assigned by the authority in securing the disposal of the tribunal application.

As indicated above, the order dated May 12, 1995 was explicit in the sense that the benefit of pay parity was extended to the writ-petitioner, as such benefit was given to the junior to her, namely Samir Kumar Mondal and the condition attached to the said order would manifest such intention of the authority. Though the benefit of pay parity was extended to the aforesaid two persons namely Sambhu Nath Ghosh and Mohan Lal Sarkar along with the petitioner but in absence of any withdrawal of the NISG benefit from Samir Kumar Mondal, the petitioner cannot be penalized nor deprived of such benefit simplicitor on the basis that the benefit of pay parity extended to Sambhu Nath Ghosh and Mohan Lal Sarkar was subsequently withdrawn. No documents are forthcoming before us evincing that the NISG benefit given to Samir Kumar

Mondal is withdrawn. The moment the benefit has been extended subject to the conditions mentioned therein, unless such condition is satisfied such benefit cannot be withdrawn by taking advantage of the decision of withdrawal of the said benefit in respect of other persons. The benefit extended to the petitioner was subject to any decision that may be taken in respect of Samir Kumar Mondal and not in respect of Sambhu Nath Mondal and Mohan Lal Sarkar. Therefore, the decision of the authority cannot be said to be proper and reasonable nor such decision can withstand on the above factual matrix.

The Tribunal would have interfered with the order of the authority on the fact narrated hereinabove and should not have acted simplicitor on the basis thereof. The order dated **19.09.2019** passed by the Tribunal is hereby **set aside**.

The tribunal application being OA 1133 of 2016 stands allowed, as a consequence whereof the order dated 22.08.2016 passed by the Special Secretary, Finance Department (Law Cell), Government of West Bengal is also set aside.

The writ-petition being **WPST 111 of 2022** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

