

WPA 22050 of 2022**Subhas Chandra Kar****vs.****North Bengal State Transport Corporation & Ors.**

Mr. Subrata Das

...for the petitioner.

Mr. Amal Kumar Sen

Mr. Sabyasachi Mondal

....for the NBSTC

Mr. Rezaul Hossain

..for the State

The petitioner worked as an Artisan in North Bengal State Transport Corporation (NBSTC). The petitioner resigned from service on June 3, 2008. The petitioner joined the Siliguri Government Polytechnic in the post of workshop instructor (electronic). Prior to his *resignation* the petitioner applied for being released by the NBSTC.

The Managing Director, NBSTC upon consideration of the prayer of the petitioner gave a '*no objection*' certificate on April 11, 2008. The Managing Director clearly informed that the corporation has '*no objection*' to spare the petitioner in the event he is selected for appointment to the post of workshop instructor with the Siliguri Government Polytechnic, Siliguri. Therefore, from the said '*no objection*' certificate it becomes clear that the petitioner was being released by NBSTC to join the Siliguri

Government Polytechnic and not for any other purpose.

Admittedly, the petitioner had an unblemished service record with the corporation for 17 years. Thereafter, the petitioner joined the Siliguri Government Polytechnic. The petitioner's gratuity was granted to him by a sanction order dated September 4, 2008 but he did not accept the same for getting paid the pensionary benefits. The last pay of the petitioner by the corporation was disbursed on August 7, 2008. The petitioner has now been superannuated from service in 2021. When the petitioner prayed for release of monthly pension it was informed to him that such monthly pension cannot be granted in favour of the petitioner since the petitioner was not entitled to pay protection of 17 years of service he rendered with the NBSTC. By a letter dated October 4, 2021, the Principal, Siliguri Polytechnic informed the Managing Director, NBSTC that since the petitioner was not being granted pay protection by taking into account the continuation of his past service at NBSTC and the petitioner's prayer for final settlement of his pension and gratuity was not being made, the Principal, Siliguri Polytechnic requested MD, NBSTC to consider the case of the petitioner and return his service book after completion of the work at the end of NBSTC.

Mr. Das, learned counsel appearing on behalf of the petitioner submits that the petitioner was entitled to pay protection under Rule 33(2) of the West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971. The said Rule clearly states that *resignation* from an appointment to take up with proper permission another appointment whether permanent or temporary, service in which counts in full or in part is **not** a *resignation* of public service. The said 1971 Rules is also approved by a notification dated September 29, 1988 issued by the Joint Secretary to the Government of West Bengal. It reiterates the fact that *resignation* under Rule 33(2) of the 1971 Rules is not **deemed** as *resignation* for the purpose of *pensionary benefits*.

Attention of this Court is also drawn to the Fundamental Rule No. 27 in order to contend that a *resignation* shall not entail *forfeiture* of past service, if it is submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where the service qualifies.

Mr. Sen, learned Additional Government Pleader draws the attention of this Court to NBSTC Employees' Pension Regulations, 1990 published in the official Gazette on August 29, 2000. He hands over in Court today the Service Regulations of NBSTC dated April

29, 1964. Under Clause 19 of the said Service Regulations, any employee may resign from service upon giving one month notice. Technical personnel will have to give three months' notice. The appointing authority may similarly terminate the service of an employee by giving either one month's notice or three months' notice (for technical personnel). The period of notice may be reduced or waived by the corporation.

He also relies on the NBSTC's Employees' Pension Regulations, 1990 which came into effect from April 1984 to contend that *resignation* from corporation service, or dismissal or removal from it for insolvency, inefficiency not due to age entails *forfeiture* of past service, relying on Clause 17 of the said regulations. He submits any form of *resignation* will entail *forfeiture* of past service.

Furthermore, he relies on a judgement reported in (2019) 4 SCC 805 (**State of Punjab and Ors. vs. Gurbaran Singh**) to contend that when the service rules provides that *resignation* from service or post unless allowed to be withdrawn in public interest by the appointing authority entails *forfeiture* of past service, the said rule will have to be followed.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that in respect of matter for which provisions have not been made in the 1990 Regulations of the

corporation, WBS (DCRB) Rules, 1971 will be applicable. Regulation 63 of 1990 Regulations is reproduced hereinunder:-

“63 **For provisions not included in the regulations** – *In respect of matters for which provision has not been made in these regulations, the relevant provisions in the West Bengal Service (Death-cum-Retirement Benefit) Rules, 1971, so far as they are not inconsistent with these regulations, shall apply mutatis mutandis in respect of the employees of North Bengal State Transport Corporation.*”

Therefore, this Court is unable to accept the contention that just because in Clause 17 of the 1990 Regulations *resignation* from corporation service is supposed to entail *forfeiture* of past service the same cannot be read in consonance with the DCRB Rules 1971. *Resignation* or dismissal or removal in Clause 17 has to be due to insolvency or inefficiency and not due to age. The said *resignation* has to be interpreted in a manner where technical *resignation* is not included in 1990 Regulations. The *resignation* which is a technical one has been described by the memo dated August 17, 2016 issued by the Ministry of Personnel, Public Grievances & Pensions, Government of India

requires to be considered before giving an interpretation to the word *resignation*.

Furthermore, any office memorandum or notification has to be read in consonance with the Fundamental Rules as far as is practicable. Therefore, this Court has no hesitation to hold that the petitioner's *resignation* was technical in nature and it was only accepted by NBSTC on the ground that the petitioner will join a Government Polytechnic. The same clearly appears from the language of the 'no objection' certificate issued by the Managing Director.

The case of **Gurbaran Singh** (*supra*) does not go to the aid of the respondent corporation in any manner. There the issue considered was of *resignation simpliciter*. Knowing fully well that *resignation* would entail *forfeiture* of past service, the petitioner resigned from service. It was not a case where *resignation* was submitted with proper permission for taking up another appointment in a Government organisation. Under Clause 7.5(2) of the Central Civil Service (Pension) Rules, the said situation has been taken care of. In that case, the Apex Court held that unless a person's *resignation* comes under the said proviso the same would entail *forfeiture* of past service. Clause 7.5(2) of CCS (Pension) Rules 1971 reads as under:-

“**7.5(2)** A *resignation* shall not entail *forfeiture of past service* if it has been

submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension.”

Since 1990 regulations of NBSTC is silent with regard to the same, the word *resignation* has to be interpreted in consonance with the 1971 Rules and also the Fundamental Rules.

The petitioner’s representation dated June 23, 2022 should have been responded to with immediate effect by the MD. The Managing Director is directed to act in terms of the request dated October 1, 2021 issued by the Principal, Siliguri Polytechnic and release the service book of the petitioner within one month from date upon calculation of the period of service of the petitioner for final settlement of pension and gratuity from NBSTC.

In the event any payment has been made over to the petitioner, that may required to be handed over by him for grant of pensionary benefits, the same will be done by the petitioner immediately and not later than within a month. The Managing Director will complete all the formalities necessary for grant of pensionary reliefs to the petitioner within one month from the date of this order.

With the direction aforesaid, **WPA 22050 of 2022 is disposed of.**

All parties are to act on a server copy of this order downloaded from the official website of this Hon'ble Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)