

Item No.15

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 22.02.2023

DELIVERED ON:22.02.2023

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.A. 20457 of 2019

Sudhir Kumar Paul.

Vs.

State of West Bengal & Ors.

Appearance:-

**Mr. Sahasrangshu Bhattacharjee,
Ms. Sayantanee Bhattacharjee**

..... for the Petitioner.

**Mr. Indranil Roy,
Mr. Subradal Choudhury,
Mr. Dipayan Choudhury**

..... for the respondent nos.2 and 3.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The writ petitioner after his retirement from service as an employee of West Bengal Livestock Development Limited (for short, "WBLDL") has filed this writ petition praying for release

of arrear salary for the period from August 1, 1986 to August 1, 2009.

2. The petitioner while working as a Junior Assistant under WBLDL retired from service on superannuation with effect from March 31, 2019. While he was in service, his pay was revised by an order dated July 31, 2009 giving effect to ROPA, 1990 scale. The petitioner claims that one Kumud Ranjan Chakraborty, who was similarly situated to that of the petitioner and was appointed more or less at the same point of time as that of the writ petitioner was given the benefits of arrear salary as per ROPA 1990 whereas the petitioner is being deprived from the benefits of the said arrear salary.

3. Mr. Bhattacharjee, learned counsel representing the petitioner, submits that a coordinate Bench of this Hon'ble Court by an order dated December 7, 2015 (Kumud Ranjan Chakraborty - Vs. - Managing Director, West Bengal Dairy & Poultry Development Corporation Ltd. & Ors.) directed the respondents to pay the arrear salary to said Kumud Ranjan Chakraborty pursuant to the revision of the pay scale as per ROPA, 1990.

4. Mr. Roy, learned counsel representing the respondent nos.2 and 3 submits that West Bengal Diary & Poultry Development Corporation Limited stood merged with WBLDL with effect from April 1, 2018. He further submits that since Kumud Ranjan Chakraborty retired on October, 2008 through inadvertence the effect of ROPA, 1990 could not be extended to Mr. Chakraborty initially but subsequently pursuant to an order passed by this Court, such benefit was extended. He submits that since Kumud Ranjan Chakraborty and the present writ petitioner stand on completely different footing, therefore, the writ petitioner is not entitled to be treated equally with that of Mr. Chakraborty. He further submits that the benefits of ROPA, 1990 was extended to the petitioner by virtue of an order passed on July 31, 2009 and the petitioner having accepted the said order, cannot be allowed to take a different stand more than 10 years from the date of issuance of such order. He draws attention of the Court to the first representation made by the petitioner dated August 9, 2019, which is annexed at page 16 of the writ petition to support such contention. He further submits that during his service tenure, several orders were passed extending various benefits to the petitioner and that the petitioner accepted all such benefits without raising any protest against the decision

of the authority not to pay the arrears as contained in the order dated July 31, 2009.

5. Mr. Roy submitted that after going through the records and taking necessary instructions from the authority, he found that there is no necessity for filing any supplementary affidavit as directed by the order dated December 8, 2022. He further submits that the entire case of the respondents have been fully disclosed in the said affidavit and no further fact are required to be disclosed. However, he sought leave of this Court to refer to an order no.285 dated July 16, 2014, a copy of which has also been served upon Mr. Bhattacharjee, learned counsel representing the petitioner, in course of hearing of this writ petition. Such document is taken on record. Mr. Bhattacharjee after looking at the said document submits that he could deal with the said document in course of hearing of this writ petition.

6. Heard the learned advocates for the parties and perused the materials placed.

7. Record reveals that increment as per ROPA, 1990 scale with effect from August 1, 1986 was extended to the petitioner by an order dated July 31, 2009. It was specifically recorded in the said order that the same was issued in supersession of all previous orders issued in the matter including grant of annual increment to the incumbent. The last paragraph of the said order is of some relevance for which the same is extracted hereinbelow:-

"It is further ordered that this order shall be effected from 01/06.2009 & no arrear payment on this account shall be made due to precarious financial position of the Corporation for the present."

8. From the aforesaid paragraph, it is evident that the authority clarified its stand to the petitioner that increment as per the ROPA, 1990 scale was extended to the petitioner on a condition that no arrear payment on such account shall be made. The petitioner duly accepted the said order and enjoyed the benefits in terms of the said order dated July 31, 2009 during his entire service tenure. It is not open to the petitioner at such a belated stage, i.e. after his retirement to turn around

and contend that he is entitled to arrear payment on account of such pay revision. It is not in dispute that the petitioner also enjoyed further benefits extended from time to time by the authority to the petitioner without making any protest.

9. It is not in dispute that Kumud Ranjan Chakraborty retired prior to the passing of the order dated July 31, 2009 by virtue of which the benefit of ROPA, 1990 scale was extended to the petitioner. For such reason, the authority took a decision to re-fix the pay of Sri Chakraborty with effect from August 1, 1986. However, the authority at that point of time, did not re-fix the salary and did not pay the differential amount to Mr. Chakraborty, which prompted him to approach this Hon'ble Court by filing a writ petition being WP No.24824(W) of 2015. The coordinate Bench after going through the decision of the Managing Director dated May 19, 2015 was pleased not to accept the contention of the authority that such fixation of pay scale was notional and directed the respondents to pay the arrear salary to Mr. Chakraborty. It is not the case of the writ petitioner that the pay of Mr. Chakraborty was re-fixed in terms of ROPA, 1990 during his service tenure or that there was any condition imposed upon Sri Chakraborty that he will not be entitled to any arrear payment pursuant to such re-fixation.

10. Therefore, this Court is of the considered view that the writ petitioner does not stand on the same footing with that of Sri since Kumud Ranjan Chakraborty as contended by Mr. Bhattacharjee, learned Advocate for the petitioner.

11. For the reasons as aforesaid, this Court holds that the petitioner having accepted the order dated July 31, 2009 and after enjoying the benefits under the said order cannot challenge the same at such a belated stage.

12. For such reason, the writ petition stands dismissed.

13. There shall be no order as to costs.

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

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)