

29.03.2023
Court No.12
S/L. No. 4 to 6
Suvayan/
Sourav

**CPAN 154 of 2022
in
WPST 178 of 2019
Debabrata Mallick
Vs.
Sukomal Pandit & Anr.**

With

**RVW 215 of 2022
With
CAN 1 of 2022
With
CAN 2 of 2022**

**State of West Bengal & Ors.
Vs.
Debabrata Mallick & Anr.**

*Mr. Debabrata Saha Roy
Mr. Indranath Mitra
Mr. Neil Basu
Mr. Sankha Biswas*

*...for the applicant in
CPAN 154 of 2022 &
For the opposite parties in
RVW 214 of 2019.*

*Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag*

...for the State.

In re: CAN 1 of 2022

Heard learned Counsel for the parties.

Taking into consideration the facts and submissions, the delay in preferring the review is condoned.

Accordingly, CAN 1 of 2022 is disposed of.

In re: RVW 215 of 2022

Heard Mr. Sirsanya Bandopadhyay, learned Counsel for the review petitioners and Mr. Debabrata Saha Roy, learned Counsel for the opposite parties.

The order passed by this Court in WPST 178 of 2019 on 04.03.2021 is under review on the ground that in course of hearing Rule 12 of West Bengal Services (Revision of Pay and Allowance) Rules, 2009 (in short ROPA 2009) was not brought to the notice of the Court and if that provision would have been brought to the notice of the Court, the directions in paragraph 16 of the judgment to the effect that the writ petitioners (present opposite parties) would not have been held to be entitled to subsistence allowance for the period of his suspension which is prior to the effectiveness of revised basic pay. The writ petitioners (present opposite parties) were suspended on 19.08.2006 till 10.11.2010. The revised scale of pay came into effect on 01.01.2006.

Rule 12(1) of the ROPA 2009 provides thus:

**“12. Payment of arrears:-
(1) Notwithstanding anything contained elsewhere in these rules, or in any other rules for the time being in force, no arrears of pay to which a Government employee may be entitled in respect of the period from the 1st day of January, 2006 to the 31st day of March, 2008, shall be paid to the Government employee.**

(2) (a) The arrears of pay to which the Government employee may be entitled to in respect of the period from the 1st day of April, 2008 to the 31st day of March, 2009, shall be paid in three consecutive equal

yearly installments in cash from the year 2009-2010.

(b) A Government employee, who retired on any date between the 1st day of January, 2006 to the 31st day of March, 2008, shall not be entitled to any arrears of pay for the period up to the 31st day of March, 2008”

The State of West Bengal in Ground X of the memorandum of review has averred thus:

“For that the judgment and Order under review is liable to be reviewed in view of the fact that had the provisions of Rule 12(1) of the West bengal Services (Revision of Pay and Allowances) Rules, 2009 would have been placed before the Hon’ble Division Bench during the hearing of the Writ Petition, the direction enshrined in the Judgment and Order under Review would not have been made. There could not be more than own possible view that in light of the mandate of Rule 12(1) of the West Bengal Services (Revision and Pay and Allowances) Rules, 2009 the Respondent is entitled to his subsistence allowance commensurate with the Respondent’s revised basic pay of Rs.36,670/- (Rupees Thirty-Six Thousand Six Hundred Seventy Only) only from a period of 1st April, 2008 to 11th November, 2010 and not for the entire period of his suspension.”

Vide Annexure-C of the CPAN 154 of 2022 the sanctioned order by the appropriate government has

been issued which is in tune with the aforesaid Ground X of the review petition.

Inasmuch as the appearing parties before us today, through their respective Counsel submitted that if the order under review stands corrected to the extent mentioned in Ground X quoted above the relief claimed in the review application would be sub-served.

Though review does not lie for failure on the part of the counsel to bring some facts before the Court but taking into consideration the peculiarity of the fact that the relevant Rule was not brought to the notice of the Court when the order under review was passed, we allow the review petition and direct that the opposite parties (writ petitioners) be paid the arrear in terms of the sanctioned order vide Annexure-C to the contempt application within a period of 15 days hence.

Accordingly the review petition being RVW 215 of 2015 and CAN 2 of 2022 are disposed of.

Consequently, the contempt application being CPAN 154 of 2022 is disposed of as withdrawn.

(Chitta Ranjan Dash, J.)

(Aniruddha Roy, J.)