

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 1607 of 2008

Sri Nirmal Kumar Chowdhury

VS.

The State of West Bengal & ors.

For the Writ Petitioner : Mr. Chandrachur Chatterjee,
Mr. Diptendu Mondal

For the KMDA : Mr. Satyajit Talukdar,
Ms. Piu Karmakar

For the State : Mr. Tapan Kumar Mukherjee,
Sr. Advocate
Mr. Somnath Naskar

Hearing concluded on : 21.06.2023

Judgement on : 21.06.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated May 7, 2008 passed by the West Bengal Administrative Tribunal in O.A. 2087 of 2006.

2. By the impugned order, the learned Tribunal found no merits in the claim of the writ petitioner. The writ petitioner claimed that he was entitled to higher pension in view of the promotion that the writ petitioner was entitled as being promoted to the post of Sub-Assistant Engineer (SAE) in his parent department.

3. Learned advocate appearing for the writ petitioner submits that, the writ petitioner was placed at the disposal of Kolkata Metropolitan Development Authority (KMDA). The writ petitioner was an employee of Public Heath Engineering (PHE). Should the writ petitioner continued with his employment in PHE, he would be promoted to the post of SAE by virtue of his educational qualification. Juniors to him at PHE were promoted to such post. The authorities did not take into consideration the pay and emoluments that the writ petitioner was entitled on promotion to the post of SAE working with PHE while calculating his pensionary benefits on his superannuation from KMDA.

4. Learned advocate appearing for KMDA submits that, the writ petitioner was not an employee of KMDA and, therefore, pensionary benefits are not payable by KMDA.

5. Learned Additional Government Pleader appearing for the State submits that, the writ petitioner was not promoted to the post of SAE at PHE to be entitled to the pay of SAE and the retiral benefits thereof. He submits that, moreover the writ petitioner retained his lien at the parent department.

6. Learned advocate appearing for the writ petitioner relies upon **AIR 1991 SC 940 (D.M. Bharati Vs. L.N. Sud & Ors.)** and **(1989) 4 SCC 99 (Ramlal Khurana (Dead) By Lrs. Vs. State of Punjab & Ors.)** in support of his contention.

7. Undisputed facts are that, the writ petitioner was an employee of PHE. He was on deputation with KMDA. On his superannuation, he was afforded retiral benefits. According to the writ petitioner, he is entitled to far more than what is now being granted by the State as pensionary benefits.

8. Writ petitioner is not claiming himself to be an employee of KMDA. Writ petitioner is claiming that he is entitled to pay and retiral benefits as that of SAE as an employee of PHE.

9. The post of SAE is a promotional post. Writ petitioner did not challenge the action of PHE authorities in not promoting the writ petitioner to the post of SAE by PHE, contemporaneously. Moreover, writ petitioner continued to retain his lien on his parent department.

10. The writ petitioner retaining his lien on the parent department, he is governed the rules of employment of his parent department. In terms of the service Rules in his parent department, he would be considered for promotion to the post of SAE. Employees of PHE were promoted to the post of SAE without the writ petitioner challenging the same contemporaneously. Even juniors to him were promoted to the post of SAE.

11. In **D.M. Bharati (supra)**, the employee concerned was on lien from the parent department. In such context, the Supreme Court found, the employee's promotion and proposed promotion in the organisation where he was on deputation did not confer him any rights in his parent department. However, if the employee qualified for promotion

to a higher post in the parent department, that benefit cannot be denied to such employee.

12. **Ramlal Khurana (Dead) (supra)** considers the meaning of lien in service law. It holds that, lien cannot be held in two departments. Lien automatically disappears on substantive appointment to another post. Non-formation in the new post was not relevant.

13. We are taken through the representation made by the writ petitioner for higher pensionary benefits. In the representation of the writ petitioner, it was claimed that the writ petitioner was an employee of PHE and that he retained his lien in such department. Writ petitioner is not claiming that he was absorbed as a permanent employee of KMDA. None of the parties before us claim that the writ petitioner is a permanent employee of KMDA.

14. Consequently, the writ petitioner is governed by the Service Rules of PHE authorities. Our attention was also drawn to a memo dated December 29, 1973, which governs the status of employee of PHE on transfer to KMDA. It regulates government servants retaining lien to a post in the

parent department. It states that, pension of such officers shall be sanctioned by the appropriate authority under the government in accordance with the West Bengal (Death-cum-Retirement Benefit) Rules, 1970.

15. As noted above, the writ petitioner continued to remain as an employee of PHE till his superannuation. He was eligible for being considered for promotion for the post of SAE at PHE. He is not in a position to establish that he was not considered for SAE. He did not complain about his alleged non-consideration. He is not entitled to the promotion to SAE as a matter of right or as a matter of course.

16. In such circumstances, we cannot extend the benefit of a promotion to the writ petitioner in his parent department. The authorities calculated the retiral benefits that the writ petitioner is entitled to on the basis of the post that he last held in his parent department.

17. In such circumstances, we find no material irregularity in the impugned order.

18. **WP.ST. 1607 of 2008** is **dismissed** without any order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

20. I agree.

(Md. Shabbar Rashidi, J.)

KAUSHIK CHATTERJEE