10.08.2023
DL-218
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 28682 of 2017

Gopi Nath Pal
vs.
Webel Electro-Optics Limited & Ors.

Mr. Gopi Nath Pal
… petitioner (in person)

Mr. Soumya Majumder
Mr. Ranajit Talukdar
…for the respondent No. 1

The petitioner was working as an accountant with Webel Electro-Optics Limited (WEOL). By a letter dated August 20, 1999, the Director-in-Charge, WEOL informed the Managing Director of M/s. Subir Udyog that the petitioner with another employee have been relieved from their duties at WEOL. The petitioner was relieved from WEOL in accordance with the Board's resolution taken on March 30, 1999. The petitioner was instructed to report at M/s. Subir Udyog.

Upon receipt of the said letter dated August 20, 1999, wherein it has been informed that he has been relieved with effect from August 23, 1999, the petitioner requested the company WEOL to withdraw the said letter dated August 20, 1999. He requested WEOL to allow him to resume his duties. The petitioner also informed the Director-in-Charge of WEOL that he reported to Mr. Poddar of M/s. Subir Udyog Limited, but Mr. Poddar refused to absorb him in the said establishment.

The petitioner was informed that the Chairman, WEOL unlawfully sought to transfer the petitioner's service. The said Mr. Poddar also requested the Chairman of WEOL to allow the petitioner to resume his duties at WEOL, upon withdrawal of the letter dated August 20, 1999. The petitioner protested against the temporary engagement that was offered to him by WEOL. He submitted that he was not a temporary employee of the company. He brought it to the notice of the company that he was a permanent employee working as an accountant since September 1, 1997. It was his case that without any temporary break in service he worked for more than 240 days in one year. Since he rendered continuous service of more than 240 days, the Managing Director certified that his name should be included as an employee of the company as an accountant.

Since the Management of WEOL refused to reinstate the petitioner, the petitioner/workman made a complaint before the Labour Commissioner, Government of West Bengal alleging his illegal termination. A conciliation proceeding was held. After the conciliation proceeding was initiated, the company/ WEOL informed the Assistant Labour

Commissioner that the company was agreeable to pay compensation of Rs.60,000/- for amicable settlement of the dispute. The conciliation proceedings failed and the dispute was referred to the 2nd Labour Court, West Bengal. The 2nd Labour Court passed an award on August 31, 2006. The petitioner was directed to be reinstated in service and full back wages and consequential benefits were to be paid from August 23, 1999, when he was illegally relieved/terminated from service. The said Award of the 2nd Labour Court was challenged by the employer/ WEOL by filing a writ petition being WP 1999 of 2006. By an order dated April 7, 2016, an Hon'ble Co-ordinate Bench of this High Court held that he found that there was no infirmity in the Impugned Award passed by the Labour Court. Accordingly, the writ petition being WP 1999 of 2006 was dismissed, with costs assessed at Rs.1,00,000/- to be paid to the employee/ petitioner. In addition, all the benefits granted by the Labour Court was directed to be given to the petitioner.

The said order of the Hon'ble Co-ordinate Bench was carried in appeal. By a judgement dated May 11, 2017, the Hon'ble Division Bench held that since the terms and conditions of the appointment of the petitioner was not brought on record, it could not be said that the petitioner was an employee during the duration of a project or that his service were lent by M/s. Subir Udyog to WEOL. The petitioner was successful in proving that he was discharging the work of an accountant in WEOL at the time of his termination vide letter dated August 20, 1999.

The Hon'ble Division Bench directed WEOL to provide work to the petitioner in the post of an "accountant" or "any other post in the clerical cadre" with effect from June 1, 2017. It was directed that the petitioner's pay should be equivalent to the Scale of Pay of an accountant as on the date of the Division Bench's order passed on May 11, 2017.

WEOL was directed to continue to pay the salary of the workman/petitioner till he attained the age of superannuation or otherwise discharged/terminated from service by WEOL, in accordance with law. It was directed that the petitioner will not be entitled to any back wages/benefits, except for the purpose of calculation of his retiral dues/benefits that may accrue by taking his past services into account, with WEOL.

The Coordinate Bench's order with regard to the payment of costs was set aside.

Pursuant to the order passed by the Hon'ble Division Bench of May 11, 2017, a letter of appointment was issued by WEOL to the petitioner on June 21, 2017. The said letter of appointment was received by the petitioner without prejudice to his rights and contentions.

The Basic Pay of the petitioner was fixed at Rs.12,270/- per month in the revised Pay Band of 3 (Rs.7100 – 37,600/-) and Grade Pay of Rs.3900/-.

Furthermore, the petitioner's Dearness Allowance was fixed on the Basic Pay as decided by the government of West Bengal from time to time. The petitioner's Dearness Allowance (DA) was fixed at 85%. The petitioner was also entitled to House Rent Allowance (HRA) @ 15% per month on the Basic Pay subject to maximum limit of Rs.6,000/-. The petitioner was entitled to actual medical reimbursement for self and dependent subject to maximum of Rs.9,000/- per month.

From the pay slip issued to the petitioner for the month of June 2017, it appears that the petitioner's Basic Pay was fixed at Rs.12,270/-, D.A. at Rs.10,430/-, HRA Rs.1841/-. The petitioner's Gross Pay was Rs.25,378/- and net Pay after deduction of taxes was Rs.22,504/-.

It is the contention of the petitioner, appearing-in-person that the Basic Pay was wrongly fixed at Rs.12,270/- by the Company/WBOL. The petitioner was sought to be inducted in the Pay Scale of one Dipak Kundu, who was not working as an accountant in the company but as a Senior Assistant. When the petitioner was inducted in the service, the said Dipak Kundu earned a lower Scale of Pay than the petitioner. Therefore, at the time of induction, the company deliberately and wrongfully inducted the petitioner at a Scale of Pay, which was not given to an accountant working in the company. Hence, the company failed to comply with the directions given by the Hon'ble Division Bench.

From the materials placed on record, it appears that the said Dipak Kundu was superannuated from service sometime in or around November 2016. At the time of superannuation, he received the Basic Pay of Rs.21,230/-, D.A. of Rs.15,923/-. The said Dipak Kundu's Gross Pay was Rs.42,071/- and his Net Pay was Rs.37,413/- at the time of his retirement.

It is submitted on behalf of the company that since there was no post of Accountant in June 2017 when the petitioner was directed to be reinstated by the Division Bench, the Company sought to comply with the directions of the Division Bench by giving him the scale of Pay that was given to the only Clerical Cadre employee who was working there, with effect from June 1, 2017.

Attention of this Court is drawn to the Supplementary Affidavit affirmed on August 10, 2013 on behalf of the WBEIDCL. It is sought to be contended that upon the implementation of West Bengal Services (Revision of Pay and Allowances) Rules, 2009, the revised Pay Band and Grade Pay of an employee who was working in pre-revised Pay Scale No. 10 was P.B. 3 and the scale was between Rs.7100-37600 for Basic Pay with Rs.3900/- Grade Pay.

The petitioner was inducted at the lowest level in P.B. 3 by granting him revised Basic Pay of Rs.12,270/- with Grade Pay of Rs.3900/-. The Company did not commit any infirmity by doing so since the other person working in Clerical Cadre was also receiving his pay in P.B. 3 and same pay scale, albeit the stage may have been higher. The Company/WOEL paid the petitioner in revised P.B. 3. Thereafter, in 2019, the said WOEL merged with the West Bengal Electronics Industry Development Corporation Limited (WBEIDCL) in accordance with a Scheme of Arrangement. The appointed date for such Scheme was April 1, 2017.

The effective date of implementation of such Scheme was to be mutually agreed upon by the Companies sought to be amalgamated.

The petitioner was absorbed by WBEIDCL. The petitioner continued in service from July 1, 2019 and was superannuated from service on October 31, 2021. After the petitioner superannuated from service, he was paid a sum of Rs.5,97,054/- as retiral benefits. The said retiral benefits included the Gratuity payable to the petitioner along with Leave Salary etc.

The petitioner in support of his contention that his retiral benefits have been grossly underpaid has not only relied on the materials on record, but also produced a document being a reply to the Right to Information Act, 2005 to contend that a Clerical employee of WBEIDCL in 2022 was receiving his monthly salary in Pay Scale of Rs.9000-40,500/- and Grade Pay of Rs.4400/-. The Basic Pay of such Senior Assistant was Rs.35,800/-.

After going through all the materials on record and submissions of the parties, this Court is of the view that the petitioner was directed to be reinstated in service with effect from June 1, 2017 pursuant to the Hon'ble Division Bench's order dated May 11, 2017. The employer/WOEL was directed to provide work to the petitioner in the post of "*Accountant*" or in any "*other post in Clerical Cadre".* The petitioner was directed to be paid the Pay Scale equivalent to that of Accountant.

Since the Company did not have any employee working in the post of an Accountant, it chose to give the petitioner the Pay Scale of one Dipak Kundu, as he was only person, who used to work in the Clerical Cadre till 2016. Therefore, to the mind of this Court, the petitioner should have been inducted in June 2017 with the Basic Pay that the said Dipak Kundu received at the time of his superannuation in November 2016. The Gross Pay which the petitioner received could not have been less than that of Dipak Kundu. After inducting the petitioner in P.B. 3 applicable for the employees in Clerical Cadre, the Company could not have inducted the petitioner at the lowest leve/stage of the Pay Scale in the P.B. 3. The intention of the Division Bench's order was not to put the petitioner at the lowest level of the Pay Scale at which a Clerical Cadre employee or employees were serving at WOEL. The spirit and object of the Division Bench's order was to give the petitioner a Pay equivalent to the Pay that an "*Accountant*" or any other person working at Clerical Cadre was receiving from the employer/WOEL. The employer/WOEL sought to interpret the order of the Division bench in a manner whereby the petitioner was paid the lowest level/stage of the Pay Scale that the only Clerical Cadre employee was earning in the Company till 2016.

With due respect to the submissions made on behalf of the respondent/Employer, such an interpretation could not have been given to the Division Bench's order. The Division Bench's order could not have been interpreted in a way prejudicial to the petitioner's interest.

Even though initially it was argued by the respondents that ROPA Rules were not applicable to the employees of WOEL, today it has been submitted that from the appointment letter of the petitioner of 2017, it appears that the ROPA Rules were applicable to employees of WOEL at the time when the petitioner was reinstated in June 2017.

In the light of the discussions hereinabove, this Court directs the respondent nos. 4 and 5 to compute the retiral benefits of the petitioner by calculating the same in a manner by which the petitioner's Pay in 2017 was equivalent to Dipak Kundu's Pay at the time of his superannuation in November 2016. After taking the Basic Pay and the Gross Pay received by Dipak Kundu in 2016, all the necessary increments and the benefits till the date of his superannuation in October 2021 will have to be calculated. The retiral benefits will be calculated on the same basis. Any further contribution required to be made of the Employer's share of Provident Fund dues considering the increase in Basic Pay from 2017 will also be given to the petitioner.

Such computation will be done within one month from the date of this order. The arrears on account of such revised fixation of Pay shall be granted to the petitioner within 15 days thereafter. The petitioner will also be entitled to interest @8% p.a. from November 1, 2021 (the date subsequent to the date of his retirement) till such time the actual dues are disbursed to the petitioner.

This Court is not willing to consider the petitioner's argument with regard to the Scale of Pay/level of Pay applicable to the other employees in Clerical Cadre Grade Pay of WBEIDCL since from the Scheme of arrangement between the WBEIDCL and WOEL, it appears that employees/labourers shall be absorbed by the transferee Company (WBEIDCL), on such terms and conditions that are no less favourable than those on which they are currently engaged by the transferor Company (WOEL) without any other interruption of service as a result of such amalgamation or transfer. The Division Bench had directed the petitioner to be absorbed by WOEL on particular terms and conditions. This Court has clarified the terms and conditions on which the petitioner should have been reinstated. Therefore, the petitioner cannot seek to improve upon his case due to the fact that the Transferor Company has now amalgamated with the transferee Company.

With the directions aforesaid, **W.P.A. 28682 of 2017** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

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

(**Lapita Banerji, J.**)