

18.01.2023

Sl.No. 141
Ct.No.3
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1250 of 2021

Dr. Debdatta Chakraborti
VS
West Bengal University of Animal &
Fishery Sciences & Ors.

Mr. Udayan Chakraborty
Ms. Sanjukta Bhattacharya
Ms. N. Dasgupta
...for the appellant/petitioner

Mr. Amitava Choudhuri
Mr. Nirmalya Ray
...for the respondent/University

After hearing both learned counsel for a considering length of time, we are of the view that the learned single Judge very rightly said that highly disputed questions of facts were involved for adjudication in the writ application. Having concurred with the above observations made by his lordship, we cannot at this point of time relegate the issues involved to an alternative forum for adjudication on facts, because the writ application was filed in this court in 2012, disposed of on 16th August, 2017. More than five years thereafter we are hearing the appeal.

It would be, at this point of time, unjust so relegate the appellant.

The appellant/writ petitioner, as we understand, has the following principal grievances before us now.

The University was not entitled to refuse his application for voluntary retirement made on 21st September, 1998.

He was entitled to retire availing of the Voluntary Retirement Scheme with effect from 31st March, 1999 and getting all benefits thereunder. Consequently, the University was not entitled to effect his regular retirement after 31st March, 2002. The appellant also claimed regularisation of leave for the period 1st October, 1998 to 7th October, 1998 and regularisation of his absence from 2nd August, 1997 to 28th April, 1998. He also claimed salary between 1st August, 1997 and 1st October, 1998. These assertions were made by Mr. Udayan Chakraborty, learned advocate for the appellant/writ petitioner.

Replying to those submissions, Mr. Choudhuri, learned advocate for the University contended that the terms and conditions, which governed the service of the appellant/writ petitioner, did not have any provision for voluntary retirement. He submitted that assuming that the appellant/writ petitioner

could avail of a Voluntary Retirement Scheme, the alleged application in this behalf dated 21st September, 1998 at page 80 of the paper book was never tendered by him to the University. Hence, there was no valid application for voluntary retirement. Furthermore, whether to allow the appellant/writ petitioner to take voluntary retirement was a discretion, which could be exercised by the University and could not be claimed as a matter of right by the appellant/writ petitioner. Moreover, the appellant was availing of the benefit of normal retirement. Having taken those benefits for all these years, now, the appellant is estopped from switching over to the Voluntary Retirement Scheme.

To those, Mr. Chakraborty, replied that by wrongfully compelling the appellant/writ petitioner to avail of normal retirement, the University was depriving him 50% of his pension.

The above facts are such that require a threadbare consideration of the Rules which governed the service of the appellant/writ petitioner, his applications for leave etc. applications for any entitlement to voluntary

retirement, his retirement in the normal course and receipt of retiral benefits thereafter.

Furthermore, whether after availing of these benefits the appellant/writ petitioner could switch over to the Voluntary Retirement Scheme?

In our opinion, all these issues should be decided strictly according to the Rules by the University itself.

We direct the Vice-Chancellor of the University to consider the entire case of the appellant/writ petitioner himself upon hearing all the interested parties including the appellant/writ petitioner and pass a reasoned order within three months of communication of this order.

We hope that upon this adjudication being made, this controversy between the appellant and the University raging for much more than one decade will be finally resolved.

We clarify that pending this adjudication, the pensionary benefits which the appellant/writ petitioner is getting now or which the University thinks that the appellant/writ petitioner is entitled to get shall be continued to be released or be paid to the appellant/writ petitioner

without prejudice to the rights and contentions
of the parties.

(Biswaroop Chowdhury,J.) (I. P. Mukerji,J.)