

WPCT 12 of 2024

(Sri Ram Debabrata Ghosh Vs. Union of India & Ors.)

Mr. Debasis Sur

Mr. Angshuman Patra

..... For the petitioner

Mr. Pinaki Bhattacharyya

.... For the respondent nos. 1, 2 & 3

The present writ petition has been preferred challenging an order dated 18th January, 2022 passed by the learned Tribunal in the original application being OA 350/1008/2019. By the said order, the learned Tribunal turned down the petitioner's prayer for disbursement of the service benefits pertaining to the period from 13th March, 1999 till 16th July, 2002.

Mr. Sur, learned advocate appearing for the petitioner submits that while passing the impugned order, the learned Tribunal did not take into consideration the fact that the denial of the respondents to disburse the pensionary benefits of the petitioner due to pendency of a criminal proceeding, was held to be illegal by a coordinate Bench of this Court in an earlier writ petition being WPCT 49 of 2011 upon arriving at a finding that the alleged charges in the criminal proceedings initiated against the petitioner had no relevance to his workplace or matters with which the employer of the petitioner was concerned. In view thereof, the impugned order passed by the learned Tribunal, being derogatory to the judgment dated 14th February, 2013, is not sustainable in law.

He further argues that the petitioner's claim was rejected placing reliance upon Rule 54(B)(6) of the Fundamental Rules (in short FR) which, *inter alia*, provides that an order of suspension passed under sub-rule (1) of FR 54(B) can only be reviewed after conclusion of the proceedings pending against the employee concerned. In the writ petition, pendency of such criminal proceeding was not construed to be a bar towards disbursement of the pensionary benefits of the petitioner and in view thereof, the full service benefits pertaining to the said period cannot be withheld.

Mr. Bhattacharyya, learned advocate appearing for the respondents, however, submits that admittedly the proceedings initiated against the petitioner, has not been disposed of. The charges against the petitioner in the said proceedings still survive and in the backdrop of such sequence, the respondents cannot be directed to disburse the full benefits pertaining to the period of suspension in view of the provisions of FR 54(B)(6) and accordingly, the learned Tribunal had rightly rejected the petitioner's claim.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the petitioner retired as Senior Auditor on 31st March, 2010. Following a complaint against the petitioner, Chitpur Police Station Case No. 90 dated 19th

March, 1999 under Sections 498A/406/34 of the Indian Penal Code was registered. In connection with the same, the petitioner was arrested and suspended during the period from 13th March, 1999 to 16th July, 2002. However, no disciplinary proceeding was initiated against the petitioner and subsequently, the order of suspension itself was revoked on 16th July 2002 and the petitioner was allowed to join. However, after retirement, the respondents withheld the petitioner's pensionary benefits and as such he preferred an original application being OA No. 1927 of 2010 which was disposed of on 12th November, 2010 with a direction upon the respondents to pay the retiral dues of the petitioner. As the said order was not complied with, the petitioner preferred a contempt application being CPC 69 of 2011. In the midst thereof, challenging the order dated 12th November, 2010 passed in OA 1927 of 2010, the respondents preferred a writ petition being WPCT 49 of 2011. The same was dismissed by a judgment dated 14th February, 2013 passed by a coordinate Bench of this Court. Pursuant to the said judgment, the pensionary benefits were disbursed and the contempt petition was dropped. However, as the actual salary pertaining to the period of suspension was not disbursed, the petitioner again submitted a representation to the authorities and as the same was not considered, the petitioner preferred another original application being OA No. 350/01177 of

2013 which was disposed of with a direction upon the competent authority to consider the petitioner's claim. Pursuant to the said order, the respondent no. 3 passed an order on 29th April, 2019 rejecting the petitioner's claim citing the provisions of 54(B)(1) and 54(B)(6) of FR and primarily on the ground that the criminal proceedings against him are still pending. Aggrieved by the said order, the petitioner preferred an original application being OA No. 350/1008/2019 and the order dated 18th January, 2022 passed in the same rejecting the application, has been impugned in the present writ petition.

A perusal of the judgment delivered by the coordinate Bench of this Court in the earlier writ petition would reveal that the Court arrived at specific findings upon considering the provisions of the CCS Pension Rules that pension of a Government servant cannot be withheld for an act committed by him outside the workplace of the Government servant and not related with the Government service. It was also held that in the absence of any allegation of grave misconduct or financial loss caused to the State, the respondents could not have withheld the pensionary benefits. The respondents did not initiate any regular disciplinary proceeding and withheld the pensionary benefits only for the reason of pendency of the criminal proceedings. Such act of the respondents was set aside. The order passed by the

coordinate Bench of this Court was not appealed against by the respondents and in terms of the said order, in spite of pendency of the criminal proceedings, the pensionary benefits of the petitioner were disbursed. However, the actual benefits pertaining to the period of suspension from 19th March, 1999 to 16th July, 2002 were still withheld by the respondents on the primary ground that the criminal proceedings have not been disposed of. A perusal of Rule 54(B)(1) and 54(B)(6) of the FR would reveal that an order of suspension passed under 54(B)(1) can only be reviewed in terms of 54(B)(6) '*after conclusion of the proceedings*'. The pendency of the proceedings was not found to be a bar towards disbursement of the pensionary benefits and such issue attained finality through the judgment delivered in the earlier writ petition.

In view thereof, the learned Tribunal could not have dismissed the petitioner's prayer for disbursement of the actual benefits pertaining to the period of suspension again on the ground of pendency of the self-same criminal proceedings, placing reliance upon the FR.

Accordingly, the order dated 18th January, 2022 passed by the learned Tribunal in the original application being OA 350/1008/2019 is set aside and the respondents are directed to regularise the period of suspension and to disburse the consequential service benefits and other admissible dues of the petitioner

pertaining to the period of suspension, with effect from 13th March, 1999 to 16th July, 2002, upon adjustment with the subsistence allowance already paid, within a period of 4 (four) weeks from the date of communication of this order.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)