

16 05.03.2024
Ct-08

MAT 260 of 2023

with
IA No. CAN 1 of 2023

Utpal Ranjan Dey
Vs.
The State of West Bengal & Ors.

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Mr. Satyajit Talukdar
Ms. Rutika Verma
... For the K.M.D.A

Mr. Pinaki Dhole
Ms. Ananya Neogi
... For the State Respondents

1. The appellant is not represented even in the second call, nor any accommodation is prayed for on behalf of the appellant.
2. In our earlier order, we made it clear that in the event the appellant is not represented on the adjourned date, it shall be presumed that the appellant is not interested to proceed with the appeal and we may dispose of the appeal on the basis of available record.
3. We have perused the stay petition and the order under appeal. It appears that the petitioner filed the writ petition, inter alia, praying for withdrawal of Memo no. 809/KMDA/9P-01/P1/P-11/2020 dated 9th September, 2021.
4. The petitioner was working as an Executive Engineer (Civil) with the Kolkata Metropolitan Development Authority. In pursuance to the resolution of the Finance Department dated 25th

November, 2015, the present pay structure and service conditions of the State Government employees were revised. Subsequently, by a Notification dated 14th January, 2020 issued by the department of Urban Development and Municipal Affairs, the Governor was pleased to direct the revision of Pay and Allowances for the regular and full time employees of the Development Authorities under the West Bengal Town and Country (Planning and Development) Act, 1979. The revision of Pay Structure was made notionally effective from 1st January, 2016 and with actual financial effect from 1st January, 2020. The employees were given an opportunity to exercise their option as per Clause 6 of the said Notification dated 14th January, 2020. The option once exercised by an employee was stipulated to be final under Clause 6(4) of the said Notification. Under Revision of Pay and Allowances (ROPA) Rules 2019, the employees could either pray for implementation of the benefits from 1st January, 2016 or from the date of promotion. The date of promotion for the petitioner was 4th August, 2017 and the petitioner exercised his option for implementation of the benefits under ROPA, 2019 with effect from 1st January, 2016.

5. The contention of the petitioner was that he exercised option wrongly. Such mistake was inadvertent. The petitioner should have exercised his option for ROPA 2019 from the date of promotion i.e. 4th August, 2017. The colleagues of the petitioner who have exercised the option from the date of promotion were getting better pay and emoluments on the date of revision.

6. The petitioner made a representation indicating such mistake for giving him the benefit of Revision of Pay and Allowances from the date of his promotion i.e. 4th August, 2017. The said representation was, however, rejected by the Deputy Secretary on 9th September, 2021. It appears that the Deputy Secretary had not committed any illegality in rejecting the prayer of the petitioner by office order dated 9th September, 2021 and the said office order has been passed in terms of the Clause 6(4) of the Notification dated 14th January, 2020. The authority has no jurisdiction to reconsider the matter as the option was exercised by the employee stipulated to be final.

7. It appears that before learned Single Judge the writ petitioner relied upon a decision of the Supreme Court in the case of ***Union of India &***

Ors. Vs. Tarsem Singh reported in **(2008)8 SCC 648**. However the said decision cannot come to rescue the petitioner as the petitioner in **Tarsem Singh** (supra) was entitled to claim disability pension under the law and therefore, the Supreme Court restricted the arrears of pension to only 3 years 2 months instead of 16 years since the petitioner approached the Hon'ble Court after a delay of 16 years. In the present case the petitioner exercised his option from 1st January, 2016 instead of 4th August, 2017 and after application of his mind, he cannot be allowed to resile from his position since his other colleagues are getting better benefits by exercising a different option.

8. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

9. In view of the above, the appeal fails and is accordingly dismissed.

10. In view of dismissal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2023 and the same is accordingly dismissed.

11. However, there shall be no order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)