

11 23.04.2024
rkd Ct.15

W.P.A. 6779 of 2020

Md. Moijuddaula Mollick

-vs-

The State of West Bengal & Ors.

Mr. Md. Moijuddaula Mollick (In Person)

....for the petitioner.

Mr. Tapan Kumar Mukherjee,

Mr. Somnath Naskar

....for the State.

The writ petition is heard when the petitioner has entered appearance in person. However, State respondents are represented by Mr. Mukherjee, learned Additional Government Pleader.

Petitioner appearing in person submits that he was a Job Assistant of Rajibpur Gram Panchayat, District- South 24 Parganas and he was on leave on medical ground with effect from 24th August, 2004. Subsequently, according to the petitioner he was sent for medical examination upon constitution of a medical board which on 19th January, 2005 declared that the petitioner was suffering from peripheral neuropathy, the said first medical report dated 19th January, 2005 is at page 29 of the writ petition.

According to the petitioner considering this medical report the concerned respondent

authorities declared the petitioner as medically incapacitate and terminated his service with effect from 19th January, 2005. It has been submitted on behalf of the petitioner that he was constantly under treatment and subsequently he filed a writ petition being WPA 12001 of 2007 which was disposed of by a coordinate Bench vide order dated 29th August, 2007 thereby directing the concerned District Panchayat and Rural Development Officer first ascertain as to whether the service of the petitioner has been validly terminated or not and whether he has been paid his terminal benefits. The coordinate Bench also directed the District Panchayat and Rural Development Officer to pass a reasoned order in the event order is passed which is adverse to the interest of the petitioner after granting opportunity of hearing.

The District Panchayat and Rural Development Officer in his turn rejected the contention of the petitioner relating to his reinstatement in service by passing order dated 1st September, 2008 which was questioned in a subsequent writ petition being WPA 4238 of 2009. Another coordinate Bench while disposing of the writ petition by passing order on 9th September, 2009 directed the concerned respondent authorities

to constitute a medical board to find out whether petitioner was mentally and physically fit to resume his job or not.

Accordingly, the District Panchayat and Rural Development Officer, South 24 Parganas was directed to refer the matter to the Superintendent, NRS Medical College and Hospital for constitution of medical board within certain time. It was also directed that the concerned District Panchayat and Rural Development Officer on receiving the report of the medical board would decide as to whether the petitioner should be allowed to resume his duty as Job Assistant in Rajibpur Gram Panchayat.

Pursuant to the said order dated 9th September, 2009 the medical board submitted a report dated 9th October, 2009 upon declaring the petitioner mentally and psychologically fit. Based on such report of the medical board dated 9th October, 2009 petitioner was permitted to resume his duty as Job Assistant with effect from 20th November, 2009 and thereafter he retired on 31st December, 2019.

The Joint Secretary to the Government of West Bengal vide order dated 9th December, 2019 decided that the petitioner to receive all benefits upon treating the period from 19th January, 2005

to 19th November, 2009 as a period spent on leave. Due to such decision of the Joint Secretary dated 9th December, 2019 petitioner did not receive arrear salary for the period from 19th January, 2005 to 19th November, 2009 when he could not discharge duty due to first medical report dated 19th January, 2005 which led the concerned respondent authorities to terminate the service of the petitioner on the ground of permanent medical incapacitation.

Petitioner has questioned the decision of the Joint Secretary to the Government of West Bengal wherein it has been observed that the period when petitioner did not render service after being declared medically unfit should be treated as period spent on leave thereby service benefits including arrear salary was not allowed in favour of the petitioner.

It has been submitted on behalf of the petitioner since second medical report dated 9th October, 2009 wherein he was found to be mentally and psychologically in stable condition then the first medical report dated 19th January, 2005 should not be taken into consideration while granting service benefit including arrear salary in his favour.

Mr. Mukherjee, learned Additional Government Pleader appears on behalf of the State respondents who opposed the prayer of the petitioner on the ground that from the documents available on record it cannot be ascertained that what was the actual mental condition of the petitioner during the period from 19th January, 2005 till the month of September, 2009 since the second medical report is dated 9th October, 2009.

It is also submitted that since the petitioner did not serve during the period in question he is not entitled to get arrear salary and other allied service benefits though that period has been regularised by the order dated 9th December, 2019 by the Joint Secretary which permitted the petitioner to receive all service benefits including the pension upon regularising the aforesaid period of absence by treating the said period as spent on leave.

Having considered the submissions made on behalf of the petitioner and the State respondents, this Court requires to consider the two medical reports one dated 19th January, 2005 and the second report dated 9th October, 2009.

On perusal of the first medical report dated 19th January, 2005 it appears that the petitioner

was declared medically unfit since he was found to have been suffering from peripheral neuropathy. The second medical report prepared on 9th October, 2009 pursuant to the order of the coordinate Bench dated 9th September, 2009 came in favour of the petitioner declaring the petitioner was in mentally and psychologically sound state. The relevant part of the medical report is quoted below:

“We have examined Md. Moijuddaula Mollick on 9.10.2009 At present there is no Neurological deficit. He is mentally sound and his psychological status is sound. He is fit to resume his job.”

While assessing the second medical report dated 9th October, 2009 this Court has found that the medical board declared the petitioner was in sound psychological and mental condition wherein the expression used “At present”. Court is not a medical expert and it has to consider the prayer of the petitioner based on the aforesaid two medical reports concerning psychological state of the petitioner. There is nothing on record which goes to show that the first medical report dated 19th January, 2005 was found to be erroneous. In the second medical report dated 9th October, 2009 the

medical board has opined that “At present” petitioner was found to be in sound mental and psychological status.

If Court proceeds on the contents of the second medical report dated 9th October, 2009 it has no other option but to affirm the stand taken as expressed in the order dated 9th December, 2019 issued by the Joint Secretary to the Government of West Bengal wherein break of service of the petitioner from the month of January, 2005 till 19th November, 2009 was regularised by treating the said period as spent on leave thereby granting all service benefits including pensionary benefits on superannuation of the petitioner with effect from 31st December, 2019 barring arrear salary for the aforesaid period.

In view of aforesaid discussion and the two medical reports furnished by the competent medical boards this Court does not find any flaw in the decision of the concerned respondent authorities not to grant arrear salary for the period when petitioner could not render service.

Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)