

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**MAT 1175 of 2024
with
IA NO: CAN 2 of 2024**

**Manindra Nath Bhattacharrya & Ors.
VS.
The State of West Bengal & Ors.**

For the Appellants : Mr. Ekramul Bari
Ms. Mira Hajra, Advocates

For the State : Mr. Pinaki Dhole,
Ms. Debdooti Dutta, Advocates

For the Khadi Board : Debangshu Dinda, Advocate

Heard & Judgement on: September 03, 2024

DEBANGSU BASAK, J.

- 1.** Appeal is directed against an order dated April 16, 2024 passed in WPA 11394 of 2018.
- 2.** By the impugned order, learned Single Judge dismissed the writ petition at the behest of the appellants.
- 3.** Learned advocate appearing for the appellants submits that, appellants were employees of the West Bengal Khadi and Village Industries

Board. Appellants superannuated from the services between the period September 30, 2009 and August 31, 2010. He submits that, State Government introduced revision of pension and family pension from January 1, 2006 payable to pensioners and family pensioners by Memorandum No. 200-F(Pen) dated February 25, 2009 and No. 201-F(Pen) again dated February 25, 2009.

4. Learned advocate appearing for the appellants submits that, the Micro and Small-scale Industries and Textile Department of the State Government introduced Pay Regulation in respect of employees of West Bengal Khadi and Village Industries Board by a writing bearing No. 1811 - MSET (1) dated August 31, 2009. He refers to Clause 12(iii) thereof and submits that, such Pay Regulation extended the revised pensionary benefits *mutatis mutandis* in terms of the Finance Department's memo both dated February 25, 2009. He contends that, the appellants initially filed a writ petition being WP 15217(W) of 2012 which was disposed of by an order dated December 21, 2016. Such order required the Authorities to take a decision on the representation. The Authorities took a decision on such representation negating the claim of the appellants on April 20, 2018. Immediately thereafter, the appellants filed the writ petition which gave rise to the impugned order. He submits that, since the pay and retiral benefits of the appellants are governed by the West Bengal Khadi and Village Pension Board (Revision of Pay & Allowances) Regulation, 2009, appellants should be extended the benefits of the two Finance Department's notifications both dated February 25, 2009.

5. Learned advocate appearing for the State submits that, none of the appellants are Government employees. The two memoranda which the appellants seek to rely upon are limited to State Government employees. None of the appellants being State Government employees are entitled to

the benefits thereof. He draws the attention of the Court to the Finance Department's Memoranda in this regard.

6. Referring to the Memorandum dated September 30, 2010, he submits that, the same revised the pension/family pension receivable by employees of the Khadi and Village Board of persons retiring after September 30, 2010. The appellants admittedly retired prior to the cut off date prescribed by the Memorandum dated September 30, 2010 and are, therefore, not eligible to revised pension.

7. In support of his contention that the authorities can prescribe a cut off date, learned advocate appearing for the State relies upon **(1993) 4 SCC 62 [State of West Bengal & Ors. vs. Ratan Behari Dey & Ors.]** and **(1997) 5 SCC 167 [State of Haryana & Ors. vs. Rai Chand Jain & Ors.]**.

8. Appellants before us were employees of the West Bengal Khadi and Village Industries Board. All of them superannuated prior to the filing of the writ petition. The superannuation period of the appellants is between September 30, 2009 and August 31, 2010.

9. None of the appellants are Government employees. Appellants are not claiming themselves to be so.

10. State Government introduced revision of pension/family pension by two memoranda of the Finance Department bearing No. 200-F(Pen) and 2001-F(Pen) both dated February 25, 2009 in respect of State Government employees.

11. Appellants are governed by the provisions of the West Bengal Khadi and Village Industries Board Act, 1959. Section 9(2) of the Act of 1959 provides that the condition of service relating to leave pay and allowances, medical benefits and house rent of officers and employees of the Board

shall be such as are admissible to similar categories of State Government employees.

12. Micro and Small-scale Industries and Textile Department of the State Government issued a writing dated August 31, 2009 introducing pay regulation for the employees of the West Bengal Khadi and Village Industries Board. Pay regulation introduced was called the West Bengal Khadi and Village Industries Board (Revision of Pay and Allowances) Regulation, 2009.

13. Regulation 12(iii) thereof provides that, pensionary benefits will be revised *mutatis mutandis* in terms of the Finance Department's Memo No. 200-F (Pen) dated February 25, 2009 and Finance Department's Memo No. 201-F (Pen) dated February 25, 2009.

14. Consequently, by virtue of Section 9(2) of the Act of 1959 read with Regulation 12(iii) of the Regulations of 2009, employees of the West Bengal Khadi and Village Industries Board are entitled to pensionary benefits as receivable by State Government employees in terms of the two notifications of the Finance Department dated February 25, 2009.

15. The two memoranda of the Finance Department both dated February 25, 2009 prescribe a cut off date for its applicability. Admittedly all the appellants fall within the scope and ambit of the two Memoranda of the Finance Department dated February 25, 2009. All of the appellants superannuated subsequent to such Memoranda coming into effect.

16. Ratan Behari Dey (Supra) is of the view that, pensionary benefit is a condition of service and it can be made operative from a cut off date event retrospectively. So long such fixation of cut off is reasonable and non-arbitrary, the same need not be set aside by a Court on the ground of violation of Articles 14 and 16.

17. Rai Chand Jain (Supra) is of the view that, where there is a policy decision, and such decision cannot be considered to be arbitrary then judicial interference with regard thereto is not called for.

18. In the present case, respective parties before us are bound by the Act of 1959 and the Pay Regulation introduced by the Micro and Small Scale Enterprises and Textile Department of the State of West Bengal through the Regulation of 2009. Such Regulation of 2009 makes the two Memoranda of the Finance Department both dated February 25, 2009 applicable *mutatis mutandis* in respect of the pensionary benefits. Consequently, the Board is liable to extend the pensionary benefits so fixed by the Memoranda of the Finance Department both dated February 25, 2009 to employees of the West Bengal Khadi and Village Industries Board.

19. The Memorandum dated September 30, 2010 governs employees of the Khadi and Village Industries Board as specified therein. Such Memorandum cannot be said to be in supercession of the benefits accorded to the employees granted the benefits under the Act of 1959 read with the Regulation of 2009. Such Memorandum, therefore, does not taken away any of the benefits awarded by the Act of 1959, Regulation of 2009 and the two finance Memoranda.

20. In such circumstances, we set aside the impugned order. We also set aside the reasoned order of the Additional Chief Secretary dated April 20, 2018. We allow the writ petition and direct the Board to grant pensionary benefits to the appellants in terms of the two Memoranda of the Finance Department both dated February 25, 2009, within four weeks from date.

MAT 1175 of 2024

21. MAT 1175 of 2024 along with connected applications are **disposed of** accordingly.

(Debangsu Basak, J.)

22. I agree.

(Md. Shabbar Rashidi, J.)

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