04.12.2024
Item No.07
Court No.11
Avijit Mitra

FMA 899 of 2023
with
IA No.CAN 1 of 2023

Asit Kumar Dolui
- Versus -
The State of West Bengal & ors.

Mr. Gobindadas Mitra
....for the appellant
Mr. Jahar Lal De,
Mr. Shamim-ul-Bari
....for the State respondents
Ms. Deblina Chattaraj
...for the W.B.T.C.

1. We have heard Mr. Mitra, learned advocate appearing for the appellant, Mr. De, learned advocate for the State respondents and Ms. Chattaraj, learned advocate for the W.B.T.C.

2. Challenge in this appeal is the judgment and order dated 20th April, 2023 as passed by the learned Single Bench in WPA 22139 of 2022. By the impugned judgment and order the learned Trial Court while disposing the writ petition allowed the prayer of the writ petitioner for disbursement of differential amount of gratuity. However, the learned Single Bench has been pleased to decline the prayer for disbursement of differential amount of salary as prayed for by the writ petitioner.

3. In course of his submission, Mr. Mitra, learned advocate for the appellant/writ petitioner submits before this Court that the appellant/writ petitioner retired from service on 31st August, 2018. In course of his submission, he draws our attention to the copy of the memorandum dated

22.01.2020 as issued by the Transport Department of the Government of West Bengal.

4. It is submitted on behalf of the appellant/ writ petitioner that pursuant to the said memorandum dated 22.01.2020, revised pay structure came into force notionally from 01.01.2016 which the learned Single Bench has failed to visualize and probably for the said reason by the impugned order that the differential amount of gratuity was directed to be paid but no favourable order for disbursement of arrear pay on the revised pay scale w.e.f. 01.01.2016 was directed to be paid.

5. Mr. Mitra thus contends that for not considering the relevant memorandum dated 22.01.2020 in its proper perspective a serious miscarriage of justice has occurred which may be rectified by allowing the instant appeal.

6. *per contra,* Mr. De, learned advocate appearing for the State also places his reliance upon the said memorandum dated 22.01.2020. Mr. De draws attention of this Court to the internal pages 1 and 4 of the said memorandum dated 22.01.2020.

7. It is submitted by Mr. De that from Clause-I of the said memorandum it would reveal that the revised pay structure would come into force notionally from 01.01.2020.

8. It is further submitted by Mr. De that from the last paragraph of Clause-X it would reveal further that as a special case a provision has been made disbursement of retiring death gratuity on the revised pay for the employees

who either retired or died during the period from 01.01.2016 to 31.12.2019. It is thus submitted by Mr. De that since the appellant/writ petitioner retired on 31.08.2018, the learned Single Bench rightly directed for disbursement of revised death-gratuity i.e. for the period from 01.01.2016 till the date of his retirement i.e. 31.08.2018 and refused the prayer for disbursement of actual benefit of arrear pay w.e.f. 01.01.2016 till his retirement i.e. 31.08.2018.

9. We have given our due consideration over the submissions of learned advocates for the contending parties. We have meticulously perused the relevant clauses of the aforementioned memorandum dated 22.01.2020.

10. For effective adjudication of the instant appeal, we propose to quote hereinbelow the relevant portions of the aforementioned memorandum dated 22.01.2022.

Clause I of the said memorandum runs as under :-

> *"I. Revised Pay Sturcture :*
> *The revised pay structure in respect of the employees of The Corporation is given in Annexure-I*
> *The revised Pay Structure shall come into force notionally from 01.01.2017 with actual financial effect from 01.01.2020."*

Clause X of the said memorandum is also quoted below in verbatim :

> *" X. Retirement benefits:*
> *a) There will be no change in the existing retirement benefits in respect of the employees of the Corporation who are now covered under CPF-Gratuity-cum-EPF(Pension) Scheme. For these employees the existing ceiling limit on gratuity shall be enhanced to Rs.12 lakh w.e.f 01.01.2016.*
> *b) In the case of the employees who are not covered under the payment of Gratuity Act, the existing ceiling of gratuity in their case shall be raised proportionately from Rs. 5,90,000/- (Rupees five lakh ninety thousand)*

only to Rs. 11,80,000/-(Rupees eleven lakh eighty thousand) only w.e.f. 01.01.2016.
c) Employees who are now enjoying Pension in term of CTC Employees' (Death-cum-Retirement Benefits) Regulations, 1990 as amended vide notification No.6068-WT dt. 30.11.2010, shall continue to be guided by the said amendment until further amendment of the said Regulations are made.
For the employees who retired or died during the period from 01.01.2016 to 31.12.2019, the Retiring/Death Gratuity would be allowed on the revised pay as a special case. For those, who already received the Retiring/Death Gratuity at the old rate, the balance amount of Retiring/Death Gratuity will be paid by the Corporation."

11. On perusal of the aforementioned two clauses, it appears to us that pursuant to the said memorandum dated 22.01.2020 though the revised pay structure came into force notionally from 01.01.2016 but its actual financial benefit was given from 01.01.2020. Admittedly, the appellant/writ petitioner superannuated on 31.08.2018.

12. Therefore, by no stretch of imagination it can be said that the present appellant/writ petitioner is entitled to get any arrear benefit on account of revision of pay from 01.01.2016 till his actual date of retirement i.e. on 31.08.2018.

13. We thus find no merit in the instant appeal and accordingly, the appeal and the connected application are also dismissed.

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

15. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Sen, J.) **(Tapabrata Chakraborty, J.)**