

26.07.2024
Item No.24
Court No.11
Avijit Mitra

WP.CT 195 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Mukunda Behari Biswas
- versus -
Union of India & ors.

Mr. Biswaroop Biswas,
Mr. PRatap Kumar Sanpui,
Ms. Nupur Chowdhury
... for the petitioner
Mr. D.N. Ray,
Mr. Ashutosh Pathak
...for the respondents

Affidavit-of-service be filed by the petitioner be taken on record.

The petitioner's last effort to secure an order for the grant of pension ended in disappointment when the learned Tribunal rejected the original application, OA 350/589/2023 by an order dated April 9, 2024.

Therefore, this writ petition has been instituted to question the justifiability of the order dated April 9, 2024, issued in OA 350/589/2023 (hereinafter referred to as the 'OA').

The petitioner joined the Postal Department as a temporary Postal Assistant at Chittaranjan Sub-Post Office on May 6, 1965. However, he failed to pass the departmental

examination required for confirmation despite three attempts. Consequently, he was terminated from service on December 15, 1969.

After more than three decades, on 5.8.2006, the petitioner submitted a representation before the concerned authority seeking reinstatement, with an alternative request for employment for his son and an additional request for payment of retiral benefits. His representation was rejected by the respondents. The order of rejection was challenged in OA 723/2007, but the learned Tribunal declined to interfere with the same on the ground that it is time-barred.

A writ petition, being WP.CT 165 of 2010 was preferred to assail the order passed in OA 723 of 2007, which was also dismissed by an order dated 13th August, 2010.

Despite having been unsuccessful in his previous attempts, the petitioner had the courage to submit further representations on February 22, 2013, and April 18, 2013, seeking reinstatement and other consequential benefits. However, despite the receipt of these representations and several inter-departmental communications, no fruitful results were achieved.

Given this situation, the petitioner again approached the learned Tribunal with an original application, OA 330 of 2021. The Tribunal disposed of OA 330 of 2021 by directing the respondents to decide on the petitioner's representation and issue a reasoned order within a specified time frame.

Pursuant thereto, the respondent no.6 by his order dated 21st December, 2022, rejected the petitioner's prayer. The order dated 21st December, 2022 was assailed in OA 350/589/2023, which was rejected by the order now under scrutiny in this writ petition.

Mr. Biswas, learned advocate for the petitioner, contends that despite the rejection of the petitioner's request for reinstatement and consequential benefits, including pension in earlier round of litigation, the issue was reopened by the learned Tribunal in OA 330 of 2021 by giving a direction upon the concerned respondent to take decision on the issue. He argues that the petitioner was terminated without following due process of law and asserts that this wrong should be rectified by directing the respondents to disburse his pension and other terminal benefits, treating him as if he had been in service from the date of his termination until his superannuation.

In rebuttal, Mr. Ray, learned advocate representing the respondents, vehemently opposes such prayer of the petitioner. He argues that after the lapse of three decades, it would not be appropriate to direct the respondents to reopen the matter. Mr. Ray further contends that the petitioner did not have the qualifying service required for receiving a pension.

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

There cannot be any quarrel in accepting the factual aspects that the petitioner was terminated in 1969. In 2006, awaking from a deep slumber, the petitioner sought his reinstatement and other consequential benefits upon cancellation of the termination order but neither the learned Tribunal nor this Hon'ble Court accepted the petitioner's request. Consequently, the issue has attained finality. Then after lapse of 13 years, the petitioner again started claiming pension and other terminal benefits, with an alternative request for employment assistance for his son.

If such a direction is issued, it would simply reinvigorate the claim which has been permanently shut out. Furthermore, it would also not be justified to issue such a direction, as it would contradict the orders passed by the learned Tribunal and also by a coordinate Bench of this Court, as well as the doctrine of finality in litigation.

In view thereof, we do not find any infirmity, substantial miscarriage of justice, patent error or any jurisdictional error in the order challenged in the present writ petition that would warrant interference with the same. Accordingly, the writ petition is dismissed.

There shall, however, 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.

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