

WPST 146 of 2024

(Md. Nurul Islam Vs. State of
West Bengal & Ors.)

Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Saloni Bhattacharjee
Ms. Ambiya Khatun

.... For the petitioner

Mr. Tapan Kumar Mukherjee, Ld. AGP
Ms. Ashmita Chakraborty

.... For the State

Mr. Sajal Kanti Bhattacharyya

.... For the respondent no. 7

Records reveal that a disciplinary proceeding was initiated against the petitioner while he was working as an Assistant Superintendent of Police attached to Narkeldanga Police Station. The said proceeding culminated in an order of dismissal of service. The said order of dismissal was challenged by the petitioner in an original application (in short, OA), being OA 8273 of 1999. The same was disposed of by a judgment dated 10th September, 2003. The operative part of the said judgment runs as follows:

'The final order of the disciplinary authority is, therefore, quashed and the applicant should be restored to his service and rank. The Respondents are directed to pass a lesser punishment as may be considered appropriate. The Respondents should take action within a period of two months from the date of communication. This application,

therefore, succeeds on merit and the same is allowed.'

Pursuant to the said judgment, the competent authority passed an order on 22nd December, 2003 reinstating the petitioner to his former post with effect from 18th December, 2003 and it was further directed that the period from 26th September, 1999 to 17th December, 2003 (i.e., during the period of dismissal) shall be treated as 'break in service'.

Challenging the said order dated 22nd December, 2003, the petitioner again preferred OA 1583 of 1583 of 2004 which was disposed of by an order dated 18th February, 2009. The operative part of the said order runs as follows:

'We modify the order of the disciplinary authority by holding that once the petitioner has been reinstated following the order of the Tribunal against which no appeal was preferred, there was no scope for the disciplinary authority to treat the period of dismissal as break in service and this should be followed by another modified order as observed by us in our present order. We, however, do not find any illegality in the modified punishment imposed against the petitioner, because, that was done in strict compliance with liberty granted by the Tribunal (refixation of pay at the minimum scale of pay). We, therefore, allow this application and we direct disciplinary authority to

record our order strictly in service book of the petitioner forthwith. Accordingly, the matter stands disposed of.'

Pursuant to the said order the competent authority passed an order on 27th March, 2009 directing *inter alia* that the period from 26th September, 1999 to 17th December, 2003 shall be treated as '*dies non*'. Subsequent thereto, the petitioner retired from his service on 28th February, 2018. Thereafter, as the petitioner was not being paid his pensionary benefits, he was constrained to prefer OA 129 of 2019 which was disposed of by an order dated 28th March, 2019. The operative part of the said order runs as follows:

'The respondent no. 4, the Deputy Commissioner of Police, Port Division, Kolkata is directed to disburse the amount of G.P.F. in favour of the applicant within a period of 08 (eight) weeks from the date of submission of the application in the prescribed format by the applicant. The respondent no. 4, Deputy Commissioner of Police, Port Division, Kolkata is further directed to grant interim allowance to the applicant during pendency of the criminal case against him in terms of Rule 14 of the D.C.R.B. Rules of 1971 within a period of 12 (twelve) weeks from the date of submission of the application by the applicant.'

Subsequent thereto, the criminal proceeding initiated against the petitioner being Special Case No. 3 of 1997 was disposed of by a judgment dated 7th February, 2023 acquitting the petitioner. Thereafter, the petitioner

submitted a representation to the respondent no. 6 dated 12th February, 2023 with a prayer for grant of the following reliefs:

‘A. make necessary correction in the service book following direction of the learned Tribunal dated February 18, 2009 passed in OA 1583 of 2004.

B. determine my entitlement after doing necessary exercise of re-fixation of pay.

C. issue revise pension payment order in terms of re-fixation and disburse full pension.’

As the said representation was not considered, the petitioner preferred OA 692 of 2023. The same was heard on 20th May, 2024 and fixed for hearing on 4th February, 2025. The present writ petitioner has been preferred primarily praying for expeditious disposal of OA 692 of 2023.

In the backdrop of the facts discussed hereinabove and with the consent of the parties the OA and the writ petition are taken up for final hearing.

Mr. Ahammed, learned advocate appearing for the petitioner, answering our query, submits that the petitioner is presently enjoying his provisional pension and Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents submits that the petitioner did not challenge the order dated 27th March, 2009 passed by the respondent no. 5.

Upon hearing the learned advocates appearing for the respective parties and considering the materials on record, we are of the opinion that no useful purpose will be served by keeping the OA and the present writ petition pending.

Accordingly, the OA and the writ petition are disposed of directing the respondent no. 6 to consider the representation submitted by the petitioner on 12th April, 2023, upon granting an opportunity of hearing to the petitioner and to pass a reasoned order, in accordance with law and to communicate the said order to the petitioner within a period of 8 (eight) weeks from the date of communication of this order along with a copy of the writ petition.

The above exercise shall be completed within a period of 8 (eight) weeks from the date of communication of this order along with a copy of the writ petition.

It is made clear that we have not gone into the merits of the case and all points are kept open to be considered by the said respondent no. 6.

As we have disposed of both the OA as well as the writ petition without calling for affidavits, the allegations levelled in the same shall be deemed to have been denied by the respondents.

Needless to observe, in the event the petitioner's claim deserves acceptance, necessary follow up steps shall be taken by the respondents forthwith.

With the above observations and directions, the original application being OA 692 of 2023 and the writ petition being WPST 146 of 2024 are disposed of.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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