

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

BEFORE: -

The Hon'ble **JUSTICE SOUMEN SEN**

And

The Hon'ble **JUSTICE UDAY KUMAR**

MAT 2159 of 2023

**North Bengal State Transport Corporation & Anr.
Vs.
Subhash Chandra Kar & Ors.**

For the Appellants : Mr. Amal Kumar Sen, A.G.P.
Ms. Sahina Sumi, Adv.,

For the Respondent : Mr. Subrata Das, Adv.,

Hearing concluded on : 21st March 2024.

Judgment on : 20th June, 2024.

UDAY KUMAR, J.: -

1. This appeal is preferred by North Bengal State Transport Corporation (hereinafter referred to as NBSTC) and the Managing Director NBSTC to challenge the order dated 6th July 2023 passed in WPA 22050 of 2022 by Hon'ble Single Judge on the ground that

- a. Clause 17 of NBSTC's Employees' Pension Regulations 1990 provides that any form of resignation or dismissal or

removal from the service of corporation entails forfeiture of past service,

- b. 'Resignation' of respondent would not be considered as 'Technical Resignation' and
- c. Rule 33 (2) of the West Bengal (Death Cum Retirement Benefit) Rules 1971 (hereinafter referred to as the DCRB Rules 1971), would not be applicable to the employees of Corporation.
- d. The respondent does not fall under any of the four classes of pensionable employees as enumerated in NBSTC's Employees' Pension Regulation, 1990.

2. The brief facts as appear from the material on record that Subhash Chandra Kar, respondent had joined NBSTC as an 'artisan' at Siliguri depot on 15th October 1991. He opted NBSTC Employees' Pension Regulation, 1990 instead of earlier Contributory Provident Fund Scheme, but he was not satisfied with his job. So on 11th April 2008 he prayed to the NBSTC to issue a 'No Objection Certificate' to apply for a prospective job. Subsequently, he tendered his resignation to NBSTC after getting a job of '**Workshop Instructor (Electronic)**' at Siliguri Government Polytechnic, which was accepted by NBSTC Authority with effect from the 3rd June 2008 and was communicated to the respondent vide memo no. 4554 dated 07th August, 2008. Consequently, the NBSTC Authority disbursed last pay & allowances to him on 03.06.2008 and Dy.

Managing Director, NBSTC communicated the same to respondent vide Establishment Order No. 474 dated 7th August, 2008. Following the 1990 Regulation, his final gratuity of Rs 78,524/- was calculated and sanctioned on concurrence of Account Department vide Establishment order no. 524 dated 04.09.2008. Vide Memo no. 5114 dated 4th September, 2008, respondent was informed as to the sanction of the said gratuity amount but he requested NBSTC Authority vide his letter dated 21st November, 2008 not to release his final gratuity, as he intended to avail benefit of continuation of service in the Siliguri Government Polytechnic. Hence, the said sanction order was cancelled/recalled by NBSTC Authority and the same was communicated to respondent vide memo 66 dated 03.01.2009.

3. Accordingly, respondent prayed to the Technical Education Department, Government of West Bengal to grant benefit of pay protection, by taking into account his previous continuous service rendered at NBSTC as per the provisions of WBS (ROPA) Rules, 2009, but the department turned down his prayer by referring to the observation of Finance Department, Government of West Bengal. It was observed that respondent's appointment as **'Workshop Instructor'** in Siliguri Government Polytechnic, *was a fresh one and his resignation from service entails forfeiture of past service*, and the same was communicated to the respondent vide memo 1002 dated 10th February 2015 of Joint

Secretary, Department of Education Technology (Polytechnic Branch), Government of West Bengal.

4. After superannuation from service in September 2021, the Respondent prayed to the Managing Director of NBSTC Cooch-Bihar for releasing the retiral benefits accrued in his favour, in lieu of the services he rendered to the NBSTC for about 17 years, along with the monthly pension on regular basis and arrears, to which he was legally entitled to. In this regard, the Principal of Siliguri Government Polytechnic Siliguri also made a communication vide memo no 181/SGP/2021 dated 01.10.2021, to the Managing Director, NBSTC Cooch Behar, for release of Pension and Gratuity to respondent to which he was entitled as per rule. His service book was also sent to Appellant No.2 for final settlement of his pension and gratuity. Since no response was received from the appellants, on 23rd June, 2022, the Ld. Advocate for the respondent sent a notice to the Managing Director, NBSTC for releasing his monthly payable pension and arrears determinable in terms of NBSTC's Employees' Pension Regulation 1990 from 03.06.2008 i.e., the date of acceptance of resignation and interests thereupon, within 15 days.
5. Ultimately, respondent Subhash Chandra Kar filed an application under Article 226 of the Constitution of India against appellants NBSTC & Others to issue a direction on NBSTC and others to release the monthly pension admissible

under Pension Regulations 1990, together with interest @ 18% per annum, to be calculated from the date of his resignation from the service on 03.06.2008 till the date of actual payment. In the said proceeding the Hon'ble Single Judge directed the Managing Director of NBSTC to respond to the representation of petitioner/ respondent dated June 23, 2022 and to act in terms of the request dated October 1, 2021 issued by the Principal, Siliguri Government Polytechnic and release the service book of the petitioner within one month from the date, upon calculation of the period of service of the petitioner for final settlement of pension and gratuity from NBSTC. Managing Director, NBSTC, was also directed to complete all the formalities, necessary for grant of pensionary reliefs to the petitioner within one month from the date of this order. The said order of Hon'ble Single Judge is the subject matter of this appeal.

6. In support of the contention of appellants, Mr. Amal Kumar Sen, Ld. A.G.P appearing for the appellants, submitted that Hon'ble Single Judge did not consider the provision of Clause 17 of NBSTC's Employees' Pension Regulations 1990, which provides that *"any form of resignation or dismissal or removal from the service of corporation entails forfeiture of past service."* Since the corporation has its own regulations for death cum retirement benefits of their employees, the provision of W.B. Service (Death Cum Retirement Benefits) Rules 1971 would not be applicable to the employee of NBSTC.

7. The Ld. A.G.P further contended that the Hon'ble Single Judge has wrongly held the 'Resignation' of respondent as 'Technical Resignation' on the basis of misinterpretation of the expression 'Resignation' given in the Office memorandum dated 17th August 2016 issued by the Ministry of Personal, Public Grievances & Pensions (Department of Personnel & Training) North Block, New Delhi. More so, this memo would not be applicable on the employees of a State Transport Undertaking. In fact, the claim of respondent does not come under any of the four classes of pensionable employees, as enumerated in NBSTC's Employees' Pension Regulation, 1990.
8. He further submitted that Hon'ble Single Judge did not accept the contention of the appellant that though Clause 63 of the NBSTC's Employees' Pension Regulation, 1990 provided that "*in respect of matters for which provision has not been made in these regulations, the relevant provisions in the West Bengal Service (D.C.R.B) Rules 1971, so far as they are not inconsistent with these regulations, shall apply mutatis mutandis in respect of the employees of N.B.S.T.C,*" but in the present case, there is no scope of applicability of WBS (DERB) Rules as there is no inconsistency in respect of the claim of respondent.
9. In support of his contention he relied on the ratio of ***State of Punjab Vs Gurbaran Singh (2019) 4 SCC, 805*** held by the Hon'ble Supreme Court and submitted it would be applicable to the employees of NBSTC.

10. Therefore, Appellant prayed for setting aside of the impugned order dated July 6, 2023 of the Hon'ble Single Judge and to stay its operation till the disposal of MAT No.2159 of 2023.
11. On the contrary, Mr. Subrata Das, Learned Counsel for the respondent/writ petitioner submitted that as per the provision of Rule 33(2) of the West Bengal (Death Cum Retirement Benefit) Rules 1971 (hereinafter referred to as the DCRB Rules 1971), the respondent was entitled to pay protection as he resigned from his earlier job at NBSTC for joining his new service, which he got after proper permission of the authority who issued "No Objection Certificate" in his favour.
12. The said DCRB Rules 1971 is also approved by a notification dated 29.09.1988 issued by the Joint Secretary to the Government of West Bengal, reiterating that resignation under Rules 33 (2) of the 1971 Rules is not deemed as resignation for the purpose of pensionary benefits.
13. It was also stated that **Rule 27** explicitly provides that a resignation shall not entail forfeiture of past service, if it is done with proper permission, is another appointment, whether temporary or permanent and is under the Government where the service qualifies.
14. Therefore, he prayed for dismissal of this appeal with cost as it had been preferred only to frustrate the interest of the respondent. The view of Hon'ble Single Judge was correct and devoid of any interference.

15. The seminal question which is involved in this appeal for determination is whether the resignation of respondent from the service of NBSTC would be considered as 'Technical Resignation' or not?
16. Indubitably, respondent was an employee under NBSTC till acceptance of his resignation on 03.06.2008, and he received all his consequential benefits including pay and allowances. The gratuity was also sanctioned but was recalled on the prayer of respondent, who was not intended to accept the same for the sake of getting benefit of pay protection against the past services rendered by him at NBSTC. He made a prayer to the Technical Education Department of the Government of West Bengal for the said benefits but it was refused on the basis of observation of the finance department that his job at Siliguri Government Polytechnic *'was a fresh one and his resignation from service entails forfeiture of past service'* and the same was communicated to the respondent vide memo 1002 dated 10th February 2015 of Joint Secretary, Department of Education Technology (Polytechnic Branch), Government of West Bengal. Till the date of his superannuation this rejection order was not challenged by him before any forum, rather he accepted the same position. After his superannuation from the service in September 2022, he faced problem in fixation of regular monthly pension. Siliguri Government Polytechnic was unable to fix his actual monthly pension due to want of proper

response of NBSTC Authority. Accordingly, the Principal Siliguri Government Polytechnic informed the Managing Director, NBSTC to consider the case of respondent from your end and return his service book with proper endorsement, as his final pension and gratuity pending for settlement. But appellants authority did not decide this matter. Being aggrieved by the lackadaisical approach of NBSTC authority to settle this matter, the respondent was compelled to file WPA 22050 of 2022 for a command to NBSTC to release monthly pension admissible under Pension Regulations 1990, ROPA 88, Rule 33 (2) of WBS(DCRB) Rules 1971, on and from 03.06.2008, the date of acceptance of resignation from service to the petitioner (respondent herein) together with interest @18% per annum calculated.

17. In this regard, Rule 33 (2) of WBS(DCRB) Rules 1971 provides that *“resignation from an appointment to take up, with proper permission, **another appointment**, whether permanent or temporary service in which counts in full or in part, is not a resignation of public service”* and Rule 26(2) of Fundamental Rule and Supplementary Rules (FR and SR) Rules 1974 which provides that *“a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission another appointment whether temporary or permanent under the Government where service qualifies.”*

18. It is the claim of Respondent that his past service of about 17 years rendered at NBSTC, prior to joining his new job at Siliguri Government Polytechnic, shall be taken into account in final fixation of his pension, because under administrative compulsion of joining the new job, he resigned service, which would be considered as Technical Resignation, as is defined under O.M 28020/1/2010-Estt. (C) dated 17th August, 2016. The requirement of permission of authority in the form of no objection certificate was also fulfilled.
19. But the NBSTC authority was restrained to grant relief to the respondent due to impediment of clause 17 of the Regulation, 1990. Clause 17 of NBSTC's Employees' Pension Regulations 1990, provides that *"any form of resignation or dismissal or removal from the service of corporation, entails forfeiture of past service."* Similar provision is also provided under Rule 33 (1) of W.B. Service (D.C.R.B.) Rules 1971, which provided that *"resignation from public service or dismissal or removal from it for misconduct, insolvency, **examination** entails forfeiture of past service"* and under Rule 27 of FR & SR Rules that *"an interruption in the service of a government servant entails forfeiture of his past service with few exceptions."*
20. Hon'ble Supreme Court has taken similar view in ***State of Punjab Vs Gurbaran Singh (2019) 4 SCC 805***. It is stated that –

8. It was thus clearly laid down that in case of resignation from service or a post, unless the matter was covered under sub rule (2) of Rule 26 of the CCS Rules, it would entail forfeiture of past service. Since the past service would stand forfeited, the same would be excluded from the period of qualifying service, and as such for deciding the question of entitlement to pension, the employee would not have the qualifying period of service.

21. The aforesaid deliberations made it clear that resignation of an employee entails forfeiture of his past service, because it terminates the relationship of employee and employer. Accordingly, from 03.06.2008, the date on which resignation of the respondent was accepted by the N.B.S.T.C Authority, the relationship of employer-employee severed. In the light of the statutory provisions, the resignation entails forfeiture of past service rendered by respondent at N.B.S.T.C. In this situation, the appellant authority was not able to extend the benefit to as claimed by the respondent, due to statutory impediments.

22. To dispel the statutory hurdles of Clause 17 of the Regulation 1990, respondent intended to establish his right under the guise of the provision of Rule 33 (2) of the W.B Service (D.C.R.B.) Rules 1971, wherein it has been provided that “resignation from an appointment to take up, with proper

permission, **another appointment**, whether permanent or temporary service in which counts in full or in part, **is not a resignation of public service**" and of Notification being Memo No.10253F dated 29.09.1988, which provides that "it has been laid down in rule 33(2) of W.B.S. (DCRB) Rules, 1971, that resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary service in which counts in full or in part, **is not a resignation of public service**, as Clause 63 of the NBSTC Employees Pension Regulation 1990, provides that "the provisions of W.B. Service (D.C.R.B.) Rules, 1971 would be applicable ***so far as they are not inconsistent with the said regulations.***" However, we are not satisfied with such interpretation of miscellaneous provision of Clause 63 of the NBSTC Employees Pension Regulation 1990, because it provides for the condition of inconsistency for applicability of W.B. Service (D.C.R.B.) Rules, 1971. We do not find any inconsistency in the provision of clause 17.

23. The respondent also tried to convince that his resignation should be considered as Technical Resignation so that his past service could be taken into consideration for fixation of pension. The term technical resignation has been recognized under Office Memorandum No. 28020/1/2010-Estt. (C) dated 17th August, 2016 of the Ministry of Personnel, Public Grievances & Pensions, Government of India and is defined

under clause 2.1.1 of the said O.M as *‘the resignation where a government servant has applied **through proper channel** for a post in **the same or other department**, and is on selection, required to resign the previous post **for administrative reasons**. The resignation will be treated as technical resignation, if these conditions are met, even if the Government servant has not mentioned the word technical while submitting his resignation. The benefit of the past service, if otherwise admissible under rules, may be given in such cases. **Resignation in other cases including where competent authority has not allowed** the government servant to forward the application through proper channel will not be treated as a technical resignation and benefit of past service will not be admissible....’*

24. It goes without saying that Technical Resignation would help only such government servants, who intends to get benefit of the past service for the purpose of fixation of pension, on his resignation from the service. The concept of technical resignation is contrary to the provision of Clause 17 of the Regulation 1990, which provides for the forfeiture of the past service of an employee of the corporation after resignation from the service, because resignation deemed to terminate the relationship of employee and employer. The conditions which require to be satisfied by a government servant for getting benefits of technical resignation are as follows -

1. The government servant should apply to the post through proper channel,
 2. The post should be either in the same department or other department of Government, and
 3. Due to administrative reasons, there must be compulsion to resign from the previous post to join new one on selection.
25. It makes necessary for the government servant who wants to take benefit of technical resignation that he shall apply for a post through proper channel. There is statutory procedure required to be followed for proper channel. Getting no objection certificate is neither equivalent to the proper channel nor amount to the permission of employer for applying to the post at other government department. Nothing is available on the record to show that respondent applied for the post of **‘Workshop Instructor (Electrical)’** at Siliguri Government Polytechnic, through proper channel or taken permission of competent authority. It appears from his statements made on affidavit in writ petition and in memorandum of appeal that he obtained ‘No Objection Certificate’ on 11.04.2008 from competent authority of corporation, which declare his intention that *“corporation has no objection to spare him in the event if he is selected for appointment to the post of Workshop Instructor (Electrical) in the Siliguri Government Polytechnic, Siliguri.”* This

certificate is mere declaration of the intention of competent authority that he will spare respondent for joining at his new job, if selected. But applying through proper channel would amount to granting approval of competent authority to the employee for appearing and joining to the new job, if selected.

26. Second requirement is the post from which a government servant has resigned and the post to which a government servant applied for, should be either in the same department or in the other department of Government. But in this case, the respondent was an employee of corporation, which is not a government department, while he applied to the post of Work Instructor under Technical department of the Government of West Bengal. Therefore, his movement from corporation to a government department is against the essence of this requirement.

27. Last requirement is that the government servant must resign his previous job due to some sort of administrative reasons, so that he could join to the new job at other department. But here we do not find any administrative reasons to submit his resignation. Respondent only resigned to join at the new post of Work Instructor (Electrical) at Siliguri Polytechnic. He voluntarily tendered his resignation so that he could join the new service at Siliguri government Polytechnic.

28. The resignation would be treated as technical resignation, only the above conditions are met, even if the Government servant

has not mentioned the word technical while submitting his resignation. Resignation submitted by a government servant in other cases including where the application of government servant was not forwarded by the competent authority through proper channel, will not be treated as a technical resignation and benefit of past service will not be admissible to such government servant. The benefit of the past service, if otherwise admissible under rules, may be given in such cases, but not under the technical resignation. Since the regulation 1990 does not permit the corporation to consider the past service of the respondent, the same was refused. Forfeiture of past services does not leave any scope to revive the relationships, which has already been severed after acceptance of resignation. So, it was not allowed.

29. However, Learned Single Judge has wrongly held the resignation of the respondent as a technical resignation and directed the appellant to proceed by considering his past services.

30. Be that as it may, we are not convinced to hold that the respondent's resignation will come under the category of Technical Resignation. As such he is not entitled to get benefit of his past services rendered at NBSTC due to statutory barriers of Regulation, non-applicability of Clause 2.1.1 of the Office Memorandum No. 28020/1/2010-Estt. (C) dated 17th August, 2016 of the Ministry of Personnel, Public Grievances &

Pensions, Government of India to the NBSTC and non-fulfillment of the essential requirements of the said O.M.

31. Moreover, the respondent's prayer for pay protection was refused by the Technical Department of Government of West Bengal in 2015 and the same was communicated to him, despite that respondent did not bother to challenge the said order. It is also pertinent to mention that he did not challenged the vires of Clause 17 of the Regulation 1990, despite the fact that it does not allow to consider past service of an employee after his resignation from service.
32. In view of the above discussions, we come to the conclusion that the resignation of respondent from the service of NBSTC would not be considered as "Technical Resignation". As such his resignation from service of corporation entails forfeiture of his past service. Therefore, respondent is not entitled to get the benefit of the past service, for the final settlement of his retiral benefits. However, he is entitled to get his gratuity amount, which was already sanctioned by the competent authority of the NBSTC but was recalled as respondent was not willing to accept, with interest @ 8% per annum on the said amount, payable from the date of acceptance of resignation till the date of payment.
33. Appellants are directed to pay the final gratuity amount to the respondent in his designated account number, within eight weeks from the date of this judgment. In default appellants

would be liable to pay penal interest thereupon at the rate of 12% per annum.

34. Accordingly, the Mat Appeal 2159 of 2023 is allowed and the impugned order dated 6th July 2023 passed in WPA 22050 of 2022 by the Hon'ble Single Judge, is hereby set aside.

35. The appeal and connected application, if any are disposed of.

36. Interim order/orders if any, stands vacated.

37. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

I agree

(Soumen Sen, J)

(Uday Kumar, J)