

**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 2414 of 2023
with
I.A NO: CAN 1 of 2023
I.A NO: CAN 3 of 2024
The West Bengal Housing Board
Vs.
Sital Kumar Biswas & Ors.

with
MAT 2415 of 2023
With
I.A NO: CAN 1 of 2024
I.A NO: CAN 2 of 2024
The West Bengal Housing Board
Vs.
Sekhar Chowdhury & Ors.

With
MAT 2416 of 2023
I.A NO: CAN 1 of 2024
I.A NO: CAN 2 of 2024
The West Bengal Housing Board
Vs.
Sipra Bera & Ors.

For the Appellant

:Mr. Aniruddha Mitra,
Mr. Dhilan Sengupta,
Mr. Ayan Chakraborty,
Ms. Sohini Mukherjee,
Mr. Sudipta Mahapatra, Advocates

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For the respondent /writ petitioner in MAT 2414 of 2023 : Mr. Soumya Majumder,
Mr. Victor Chatterjee, Advocates

For the respondent/ writ petitioners in MAT 2415 of 2023 and MAT 2416 of 2023 : Mr. Arup Kumar Lahiri,
Mr. Udayan Datta, Advocates

For the State : Mr. Tapan Kumar Mukherjee, Sr adv.
Mr. Pinaki Dhole,
Mr. Somnath Naskar,
Mr. Arindam Ghosh, Advocates

Heard & Judgement on : June 10, 2024

DEBANGSU BASAK, J.

1. Three appeals are taken up for analogous consideration as they emanate out of the same impugned judgment and order dated September 25, 2023 passed in three several writ petitions.

2. There is an issue of delay in preferring the appeals. For the ends of justice, the delay in preferring the appeals is condoned on the basis of the averments made in the respective applications. CAN 1 of 2023 in MAT 2414 of 2023 and CAN 1 of 2024 in MAT 2415 of 2023 and MAT 2416 of 2023 are **allowed**.

3. By consent of the parties, the appeals are taken up for final hearing. All papers used before the learned Single Judge form part of the stay

application being CAN 3 of 2024 filed in MAT 2414 of 2023. The appeals are heard on the basis of such papers.

4. Learned advocate appearing for the appellant draws the attention of the Court to Sections 12, 21 and 43 of the West Bengal Housing Board Act, 1972. He refers to a communication issued by the Finance Department of the State Government and the action taken by the Board thereon. He, in his usual fairness, points out that, the communication of the Finance Department and the action taken thereon by the Board are not on record. He seeks leave to rely upon them.

5. Referring to the provisions of Sections 12, 21 and 43 of the Act of 1972, learned advocate appearing for the appellant submits that, the appellant is enjoined with the power not only to appoint employees of the Board but also to regulate the service conditions of such employees. He submits that, the Board in exercise of such powers, accepted the recommendations of the Finance Department not to extend modified Employees Career Advancement Scheme (MCAS) to its employees. He submits that, such action of the Board should be construed to be in terms of Section 43 of the Act of 1972.

6. Learned advocate appearing for the appellant relies upon **2022 SCC OnLine SC 1628 [State of U.P. and Ors. vs. Virendra Kumar & Ors.]** and submits that, similar provisions of the Act of 1972 appearing in *Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965* were considered by the Supreme Court. He submits that impugned judgment and order should be set aside.

7. State and the private respondent/writ petitioners are represented.

8. Writ petitioners were employees of the Board. In course of their employment they enjoyed MCAS. On superannuation, the issue as to their

retiral benefits came up for consideration when the Board took the view that the writ petitioners were not entitled to MCAS benefits which they enjoyed during their employment. The Board proceeded to withhold the benefits of MCAS granted to the writ petitioners from the retiral benefits receivable by them.

9. Aggrieved by such action of the appellant, the writ petitioners filed three several writ petitions which were disposed of by the impugned judgment and order.

10. The single Judge framed two issues for consideration which are as follows: -

"(i) Whether the State Government has jurisdiction to issue directions regarding the fixation of conditions of service of the officers and employees of the West Bengal Housing Board under the provisions of the 1972 Act.

If the answer to the said issue is in the affirmative, the next issue that would arise for consideration is -

(ii) Whether the amount drawn by the employees in terms of the decision of the West Bengal Housing Board for extension of the benefits of MCAS, 01 can be recovered from the writ petitioners from their retirement benefits."

11. Learned single Judge considered the factual matrix of the case as also the authorities cited before him. Learned single Judge answered the first issue in the negative as against the appellant and in favour of the private respondents. The second issue was answered by holding that in view of the first issue being answered in the manner as done, the second issue became academic.

12. In such circumstances, the learned single Judge proceeded to direct the appellant to reimburse the withheld MCAS benefits to the writ petitioners.

13. Both the issues as noted by the learned single Judge fall for consideration before us.

14. Sections 12, 21 and 43 of the Act of 1972 are as follows :-

*"12. (1) The Board shall have a Housing Commissioner, who shall be the Chief Executive Officer * * * * and such other officers and employees as the Board may consider necessary for the efficient performance of its functions.*

21. (1) Every budget sanctioned by the Board shall be submitted to the State Government for approval. [Within such time as may be prescribed,] the State Government may approve the budget as sanctioned by the Board or return it to the Board for making such modifications therein as the State Government may deem fit.

(2) Where a budget is returned to the Board by the State Government for making any modifications therein, the Board shall forthwith make such modifications and submit the budget as so modified to the State Government, which may then approve the same.

43. (1) The Board may from time to time, with the previous sanction of the State Government, make regulations consistent with this Act and with any rules made under this Act.

(2) Such regulations may provide for-

(a) the management and use of buildings constructed under any housing scheme;

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(b) the principles to be followed in allotment of tenements and premises;

(c) regulating its procedure and the disposal of its business;

(d) the conditions of service of the employees of the Board other than those taken over and employed under sub-section (1) of section 13.

(3) If it appears to the State Government that it is necessary or desirable for carrying out the purposes of this Act to make any regulation in respect of matters specified in sub-section (2) or to amend any regulation made under the sub-section, it may call upon the Board to make such regulation or amendment within such time as it may specify. If the Board fails to make such regulation or amendment within the time specified, the State Government may itself make such regulation or amendment and the regulation or the amendment so made shall be deemed to have been made by the Board under sub-section (1)."

15. Section 12 of the Act of 1972 deals with powers of appointment of certain specified grade of employees by the Board. Section 21 of the Act of 1972 deals with the budgetary provisions of the Board while Section 43 empowers the Board to make regulations in the fields specified in sub-Section (2) thereof.

16. The facts of the present case do not revolve around appointment of the writ petitioners. The issue is with regard to the entitlement of receipt of MCAS by the writ petitioners during their employment.

17. While the writ petitioners were in employment, from time to time, Board prepared its budget and sought approval from the State, in terms of

Section 21 of the Act of 1972. In response to the query of the Court, learned advocate for the appellant submits that, the budget of the appellant obviously took into consideration the MCAS benefits extended to the employees of the appellant including the writ petitioners.

18. Considering the first issue from the perspective of Section 21 of the Act of 1972, it can be said that, the appellant was employed by the State Government while State Government sanctioned the budgetary provisions of the appellant, year after year to extend MCAS benefits to its employees of the appellant including the writ petitioners.

19. Section 43 of the Act of 1972 empowers the appellant to make regulations and Rules relating to the areas specified in sub-Section (2) thereof. However, such regulations and Rules must be consistent with the Act of 1972 and the Rules made thereunder. Moreover, the appellant may make such regulations with the previous sanction of the Act of the State Government.

20. In the facts and circumstances of the present case, appellant is unable to establish that the service conditions of the writ petitioners were modified so as to withdraw MCAS benefits extended to them, during their employment with the previous sanction of the State Government by making a regulation consistent with the Act of 1972. In absence of such materials being placed, appellant cannot be allowed to contend that it can take shelter under Section 43 of the Act of 1972, for the purpose of withholding MCAS benefits already extended to the writ petitioners, during their employment.

21. Learned single Judge, considered **Virendra Kumar** (supra) cited before us. **Virendra Kumat** (supra) deals with three issues including the issue whether the, judgment of the Supreme Court in **Preetam Singh's**

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case **2014 (15) SCC 774** laid down the correct law or not. It answered such question in the affirmative.

22. In view of the discussions above, we find no merit in the three appeals.

23. All appeals and connected application being CAN 3 of 2024 in MAT 2414 of 2023 and CAN 2 of 2024 in MAT 2415 of 2023 and MAT 2416 of 2023 are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

24. I Agree.

(Md. Shabbar Rashidi, J.)

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