

27.11.2024
Item No.81
Court No.11
Avijit Mitra
ML

MAT 2498 of 2024

**The West Bengal State Electricity Distribution
Company Limited & ors.**

- Versus -

Biswanath Mondal

Mr. Sumit Roy

....for the appellants

Mr. Arindam Chattopadhyay,

Ms. Lipika Chatterjee,

Mr. Soumik Dey,

Ms. Tapati Saha

....for the respondent

The present appeal has been preferred by the West Bengal State Electricity Distribution Company Limited (in short, WBSEDCL) and its functionaries challenging an order dated 10th October, 2023 passed by the learned Single Judge in a writ petition being WPA 3831 of 2023. The operative part of the said order runs as follows:

‘The petitioner/an employee cannot be made to suffer due to laches or negligence on the part of the respondent authorities. The petitioner shall be considered for grant of benefits as per the order dated March 24, 2021 passed by the General Manager (HR & A), WBSEDCL. Such benefits will be granted to the petitioner within two months from the date of the order if otherwise found eligible. The arrears of such benefits will also be given to the petitioner within two months from the date of the order.

With the directions aforesaid, W.P.A. 3831 of 2023 is disposed of.’

The writ petitioner/respondent herein was an employee of WBSEDCL and he retired from his service on

30th April, 2018. A criminal case was initiated against him on 9th November, 2011 and he was taken into judicial custody on 10th May, 2012. However, he was released on bail on 8th June, 2012 and he resumed his service on 9th June, 2012. Ultimately, by a judgment and order dated 26th March, 2018 he was honourably acquitted. Challenging *inter alia* the denial of promotional benefits and the inaction on the part of the appellants towards proper calculation and disbursement of terminal benefits, the respondent earlier preferred a writ petition being WPA 3101 of 2021 which was disposed of by an order dated 23rd February, 2021 directing the appellant no.2 herein to consider the representation submitted by the respondent. Pursuant thereto, the said appellant passed an order dated 24th March, 2021 observing *inter alia* that the appellant '*is eligible to be considered for getting 3rd level promotion, as per rules of the Company, if all necessary formalities are complied with*'. Alleging that all the benefits have not been disbursed in terms of the said order dated 24th March, 2021, the respondent again preferred a writ petition being WPA 3831 of 2023. The order passed in the same has been impugned in the present appeal.

Mr. Roy, learned advocate appearing for the appellants submits that even after arriving at a finding that the respondent had not been able to show that he did submit his Performance Appraisal Report (in short, PAR), within the time stipulated in the procedure prescribed by the appellants, the appellants were directed to disburse the

benefits as per the order passed by the appellant no. 2 on 24th March, 2021.

Drawing our attention to the procedure for self-Assessment Report (in short, SAR)/PAR of an employee of WBSEDCL, Mr. Roy submits that it was incumbent upon the respondent to initiate action by submitting his SAR/PAR positively within 15th April every year to his immediate Controlling Officer. Such obligation though not discharged by the respondent, the onus was shifted upon the appellants and they were erroneously held to be responsible.

He argues that after cessation of the employer-employee relationship way back in 2018, the learned Single Judge ought not to have issued direction towards consideration of the subsequent representation of the respondent dated 24th September, 2021. Such arguments, as advanced, were glossed over and no finding was returned on the same.

Per contra, Mr. Chattopadhyay, learned advocate appearing for the writ petitioner/respondent submits that from the procedure prescribed it would be explicit that the responsibility was upon the initial Reporting Officer for collection of all SAR/PAR and to forward the same to the superior Reviewing Officer within a specified period of time. The said officer admittedly failed to do so and for such laches, the respondent cannot be made to suffer. In view thereof, the learned Single Judge rightly exercised discretion

in favour of the appellant and there is no infirmity in the order impugned.

Drawing our attention to the letter dated 30th July, 2021 issued by the appellant no. 5, Mr. Chattopadhyay submits that there was no specific statement to the effect that the respondent did not submit SAR/ PAR. On the contrary, in the said letter it was observed that '*as per available record no data of PAR-SAR for the period from 2017-18 has been found in our data base*'. The appellants have thus miserably failed to establish that the respondent did not submit such SAR/PAR within the time stipulated. It was incumbent upon the concerned officer to immediately approach the respondent in the event there was any dispute as regards availability of the SAR /PAR.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The argument of Mr. Roy that it was the respondent's obligation and duty to submit the SAR within the period prescribed, in our opinion, was rightly discounted by the learned Single Judge since as per the procedure it was the duty and responsibility of the initial Reporting Officer to obtain such SAR/PAR from the employee concerned and to forward the same to the next superior officer. The said procedure also provides that in the event of any delay, the concerned higher level officer should send a stricture to the officer at the lower level. In the said conspectus, we do not find any infirmity in the observation of the learned Single

Judge that the respondent cannot be made to suffer for the laches or negligence on the part of the appellants. The discretion as exercised by the learned Single Judge is fortified with reasons and denial of the benefits to the respondent would have been iniquitous.

Upon dealing with all the factual issues, the learned Single Judge arrived at specific findings and we do not find any error of law in the same.

For the reasons discussed above, no interference is called for in the present appeal and the same is, accordingly, 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 Sen, J.) (Tapabrata Chakraborty, J.)