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ORDER SHEET
WPO/1365/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SMT ANJALI SAHA AND ORS
-VS-
THE STATE OF W.B. AND ORS

PRESENT:

THE HON'BLE JUSTICE RAJASEKHAR MANTHA

DATE: 22ND MAY, 2024.

Mr. B.P. Subba, Adv.; Ms. N. Chakraborty, Adv., appear.

Mr. K. Dutta, Ld. A.G.; Mr. A.K. Ganguly, Adv.; Mr. T. Karan, Adv., appear.

Mr. V. Bose, Adv.; Mr. R. Pal, Adv., appear.

1. THE COURT: The Learned Advocate General has appeared on behalf of the State and has made submissions primarily on law and the interpretation of section 18 of The West Bengal Labour Welfare Fund Act, 1947 (for short "the 1974 Act"). It is submitted that section 18 of the Act cannot be read dehors section 17. Section 18 of the 1974 Act is set out below:

> "18. Appointment of staff by Board.-(1) The Board shall appoint such number of officers and other employees as may be necessary for carrying out its functions under this Act.

(2) The Board shall, with the approval of the State Government, make regulations regarding the method of recruitment, pay and allowances, and all other conditions of service of the members of its staff appointed under this section :

Provided that until regulations are so made the conditions or service of such staff shall be governed by the rules made by the State Government in this behalf."

2. Section 18(2) required, the Board constituted under the Act of 1974, to frame regulations with regard to recruitment, pay and allowances and all other conditions of the service of its employees. The expression "staff" used under section 18 must be understood to be those who have been directly recruited by the Board and not from the office of the then Labour Commissioner. The latter category of employees are covered under section 17.

3. Admittedly, each of the 70 petitioners are all appointed by the West Bengal Labour Board constituted under the 1974 Act. They are only receiving ad-hoc pension of a paltry amount. For about 50 years, since the constitution of the Board, no attempt has been made to frame any regulations for its employees either by the authorities under the Act or the State Government. The strange and shocking inaction on the part of the State to act in terms of section 18(2) can either be deprecated or interpreted to mean that the State, at all material times, intended that the service conditions applicable to the State Government employees would apply to all employees of the Board.

4. No separate or independent rule or regulation with regard to conditions of service and retirement have been followed for employees recruited by

the Board from 1974 till date. This is also confirmed by the conduct of the State, the Board as also in the light of the proviso to section 18, set out hereinabove. The proviso states that until separate Service Regulations are framed for the employees of the Board, the service conditions of the staff of the Board, would be as per the rules applicable to the State Government employees.

5. The State has in fact been, following the service conditions, applicable to State Government employees to the employees recruited by the Board. Consequently that the DCRB scheme of 1971 as revised in 1981 would also automatically apply to all employees of the Board.

6. Let us now consider the scope and effect of section 17 as argued by the learned Advocate General. Section 17 of the Act of 1974 is set out as follows:

> "17. Absorption of the existing staff of Labour Commissioner.-
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> The Board shall take over and employ such of the existing staff under the control of the Labour Commissioner, West Bengal, as the State Government may direct and every person so taken over and employed shall be subject to the provisions of this Act and the rules made thereunder :
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> Provided that-
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> (a) during the period of such employment all matters relating to pay, leave, allowances, pensions, provident fund and all other conditions of service of the said staff shall be regulated by the rules of the State Government for the time being in force or such other rules as may from time to time be made by the State Government;

(b) every person so taken over shall have a right to appeal to the State Government against any order of reduction, dismissal or removal from service of fine or any other penalty imposed by the Board:

Provided further that any person so taken over may elect within the prescribed period that he desires to be governed by the regulations made under this Act in respect of the conditions of service of the staff appointed by the Board under this Act and on his electing to do so the provisions of the first proviso shall cease to apply to him."

7. A plain reading of the said section would indicate that it was intended to deal with a specific separate class of employees. Such employees were those who were already working under the Labour Department of the State and were either sent on deputation or allotted permanently to function under the Board constituted under the Act of 1974.

8. The aforesaid view is further strengthened by the fact that persons working under the State Government under the Labour Commissioner were allowed the same benefits of pay, leave, allowances, pensions, provident fund and all other conditions of service, hitherto applicable to them under the office of the Labour Commissioner. An option has been reserved these class of employees under the proviso to section 17. The said class of employees shall either elect for the benefits as State Government employees or receive the benefits under the regulations that may be framed by the Board as conceived under section 18.

9. Sections 17 and 18 therefore refer to different classes of employees. While section 18 refers to employees like the petitioners who were

recruited directly by the Board under the Act of 1974, persons falling under section 17 were those who were absorbed from the service of the State into the service of the Board.

10. This Court therefore need not read the expression "pension and provident fund" used under section 17(a) for the purpose of interpretation of sub-clause (ii) of section 18. The expression "regulations regarding method of recruitment, pay and allowances and other conditions of service" in sub-clause (ii) of Section 18, even without reference to Section 17, must be understood to include retirement benefits like pension, provident fund, gratuity, leave encashment etc. Retirement benefits and pension are an integral part of service conditions of all persons coming within the scope of Article 16 of the Constitution of India. Such benefits are not a bounty.

11. In the backdrop of the above, the argument of the learned Advocate General that the exclusion of the words "pension and provident fund" from section 18 is a deliberate act of the legislature intended to deprive the petitioners of pension and other retirement benefits is unacceptable.

12. This is not a case for invoking the principle of causus omisus. As already stated hereinabove, section 18 is a standalone provisions need not be read in the context of section 17. It is in the above context that paragraph 15 of the judgment of the Supreme Court in the case of **State of U.P. & Anr. –vs- Union of India,** reported in **(2003) 3 SCC 239,**

placed by the learned Advocate General, would not have any manner of application.

13. In the said judgment, the Supreme Court was addressing the interpretation of section 2(c)(iv) and (viii) pre and post amendment. The expression "dealer" under sub-clause (viii) of section 2(c) post amendment was not so changed as to exclude the Department of Telecom from its scope. The post-amendment sub-clause (viii) according to the Supreme Court was only for abundant caution.

14. In fact, the views of the Supreme Court in paragraph 15 could be interpreted as aiding the writ petitioners. Going by the analogy at paragraph 15 even if one assumes that section 18 must be read in the context of section 17. The expression "pension and provident fund" used in section 17 must be deemed to be apply also to section 18.

15. The conduct of the State also does not support the interpretation and argument of the learned Advocate General. By the communication dated November 29, 2019, the Additional Chief Secretary of the Government of West Bengal, Finance Department had proposed ROPA 2019 and revised pay and revised pension to apply and cover a list of 54 organizations. The West Bengal Labour Board is mentioned against organization no. 26 in Annexure 1 to the said letter.

16. Further, by letter dated July 7, 2022, the Governor was pleased to revise the pay, allowances of the employees of the West Bengal Labour

Welfare Board mutatis mutandis in terms of ROPA 2019. At clause (10) of the notification, it is stated that the pension benefits to the employees of the West Bengal Labour Welfare Board will be given effect to after finalization of the DCRB rules.

17. This Court had suggested to the Learned Advocate General that a period of two months shall be given to the State to frame service and pension regulations for the employees of the West Bengal Labour Welfare Board, in default whereof the DCRB scheme of the State as applicable to State Government employees would automatically become applicable to the employees of the Board. The learned Advocate General could not make any commitment before this Court.

18. Admittedly, the petitioners are receiving ad hoc pension which is a fraction of the regular pension payable to State Government employees. There is absolutely no difference in the service conditions for the petitioners and the employees of the State Government.

19. The Board is an alter ego of the State. The employees of the Board albeit cannot be deprived of any benefit being given to the State Government employees. The employees of the Board are bound by all the terms and conditions of service being applied to all State Government employees. Therefore they cannot be treated differently merely because the State Government has been completely inactive for 50 years in framing any service Regulations for them. The State cannot meet out a

stepmotherly treatment to the employees of the Board. The State, in not framing service regulations for the petitioner for 50 years, must be deemed to have acted in a manner which is manifestly arbitrary.

20. In view of the discussions made hereinabove and the non-committal attitude of the State, there shall be a writ of mandamus directing the Finance Secretary and the Chief Secretary as also the Principal Secretary of the Labour Department, Government of West Bengal to forthwith allow full pension to each of the petitioners as was and is payable to the retired State Government employees.

21. All revisions of pay applicable to all State Government employees from ROPA 1998 till ROPA 2019 shall be applied to the employees of the West Bengal Labour Welfare Board.

22. The pension shall be payable to the petitioners from the date of their superannuation. If any of the petitioners have received the employer's share of contributory provident fund, they shall refund, the same along with interest @ 6% per annum within the period of two months from date, i.e. July 31, 2024. The quantum of refund shall be communicated by the West Bengal Labour Welfare Board to each of the petitioners in consultation with the DPPG, West Bengal.

23. Let Pension Payment Orders (PPOs) be issued to each of the petitioners by August 17, 2024. All arrears of pension accruing from the date of superannuation of each of the petitioners till the date of actual

payment together with interest at the rate of 7% per annum, shall be paid to them within a month from issuance of PPO.

24. If any regulations are framed or proposed to be framed by the State under section 18(2) of the Act of 1974, the benefits conferred thereunder to the employees of the Board shall not be in any way less than that being paid to the employees of the State Government.

21.With the aforesaid directions, the writ petition is allowed and disposed of.

22.There shall be no order as to costs.

(RAJASEKHAR MANTHA, J.)

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