

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Uday Kumar

APO NO.53 of 2024

In

WPO/197 of 2019
IA No. GA 2 of 2023

SAMIR CHATTERJEE

VS.

WEST BENGAL POLLUTION CONTROL BOARD & ORS.

For the Appellant	:	Mr. Soumya Majumdar, Adv., Ms. Sanjukta Dutta, Adv.,
For the WBPCB	:	Mr. N.C. Bihani, Adv., Mr. Sourya Mukherjee, Adv.
For the State	:	Mr. Ayan Banerjee, Adv., Mr. Debasree Dhamali, Adv.
Hearing concluded on	:	16 th May, 2024
Judgment on	:	24 th May, 2024

Soumen Sen, J.:-

1. The status of the appellant in the West Bengal Pollution Control Board, (hereinafter referred to as the 'Board') is the subject matter of challenge in this appeal. The writ petitioner challenged the order dated 14th December, 2018 passed by the Director Pension Provident Fund and Group Insurance whereby the prayer of the writ petitioner for retiral benefits for services rendered by him from 1986 to 1996 has been rejected.

2. The learned Single Judge in the impugned order has refused to set aside the order dated 14th December, 2018 passed by the Director Pension Provident Fund and Group Insurance, Government of West Bengal.

3. The petitioner initially appointed on 29th March, 1986 as technician. The petitioner claims to be a Work Charged Employee since inception till his service was regularized and was brought under the regular pay on and from 29th March, 1996. The dispute arose with regard to his job profile and description in the relevant service record.

4. Mr. Soumya Majumder, the learned Counsel appearing on behalf of the writ petitioner has submitted that apart from the confusion being created with the use of the alphabet 'a' in Muster Roll instead of vowel 'u' in Muster Roll, the nature of the work the appellant was required to perform and the pay benefits extended to him under ROPA 1991 would clearly show that he was all throughout treated as a Work Charged Employee and not a Muster Roll Employee.

5. Mr. Majumder has submitted that the Board is the best judge to decide on the status of the employees. It has in its 140th Board meeting recognised the appellant as a Work Charged Employee based on his status and performance.

6. The learned Counsel has referred to Government Order dated 1st July, 1994 and 3rd July, 2002 to show that the writ petitioner conforms to the criteria of the Work Charged Employee covered by the said two government orders. It is submitted that the writ petitioner was a Work Charged Employee/temporary employee would be evident *inter alia*, from extension of benefits under ROPA 1991, absorbed as a permanent employee

in 1996 after completion of 10 years of continuous service, the letter of the board describing the writ petitioner as WC (MR) Employee, Board Resolution of 2008 recognising past service of the petitioner as Work Charged Employee and allowing conversion from CPF to GPF by the Board in its 140th Meeting.

7. All the aforesaid events had occurred during the service tenure of the writ petitioner/appellant with the Board. All the documents on which the respondent authorities have relied in support of the order dated 14th December, 2018 issued by the Director, Pension Provident Fund and Group Insurance have completely ignored the aforesaid documents and had relied upon materials to suggest different status of the petitioner qua a Muster Roll employee are all after he has superannuated from service.

8. The learned Counsel has referred to the PWD manual to show the difference between the Work Charged Employees and Muster Roll employees. Mr. Majumder submits that the said manual clearly states that if a person is employed for a specific project even on a temporary basis he should be considered as a Work Charged Employee. They are engaged on a temporary basis and they are appointed for the execution of a specified work. However, they are on a better footing than temporary servants who are liable to be dropped out of employments without any kind of compensatory benefits. The Muster Roll employees on the other hand would mean daily labourers who should never be considered as permanent and temporary employees whose pay is charged to the head "Establishment" or to the members of the Work Charged establishment. They are basically employees who are engaged on a "no work no pay basis" and treated as a daily wager.

9. Mr. Majumder submits that a Work Charged Employee although reckonable to a specific project may render continuous service and his status is akin to that of a Temporary an employee at the most. In absence of any evidence to show that the respondents had ever treated the petitioner appellant on a “no work no pay basis” or a daily wager and having regard to the fact that his name was borne in a pay scale, earned increments and was even allowed conversion from CPF to GPF the appellant ought to have been reckoned as a Work Charged Employee.

10. Mr. Majumder submits that attempt to recover money on account of overdrawal superannuation is against the principle of law laid down by the Hon’ble Supreme Court in ***State of Punjab v. Rafiq Masih***.¹

11. Per contra, Mr. N. C. Bihani the learned Counsel appearing on behalf of the Board has submitted that the petitioner was engaged as a Sub-Assistant Engineer for National Ambient Air Quality Monitoring Project (NAAQMP) from 29th March, 1986 as an employee under Muster Roll on purely contractual basis with the Board.

12. The fact that the petitioner was a Muster Roll Employee would be evident from the Muster Roll bill no.**1570/513** and **7/50** for the month 22nd January, 1996. The said document is Annexure “A” to the Affidavit-in-Opposition filed by the respondents. The said document gives particulars of the staff working under the Office/Project of the Board at Howrah.

13. Mr. Bihani submits by referring to the various heads that he was treated to be a daily rated wager @ Rs.142.18 Paisa per day with a maximum selling of monthly illuminates of Rs.3128. Subsequently, the

¹ 2015 (4) SCC 334.

petitioner was confirmed as a technician with effect from 28th March, 1996. The writ petitioner received the benefit of Career Advancement Scheme (hereinafter referred to as 'CAS') in terms of the Memo No.3431/19/WBP-9195 issued by the Board dated 24th December, 2001 upon completion of 10 years of continuous service as MR/Work Charged and Regular employee without any promotion. In furtherance to the clarification sought for by the Board regarding pay protection the Government issued a Memo dated 8th February, 2006 *inter alia*, clarifying that past service at Work Charged establishment are only to be reckoned for determination of eligibility of getting the benefit under CAS 1990 and not service of any employee in Muster Roll or any daily rated worker in terms of the Finance Department Memo dated 1st July, 1994. The Finance Department was of the view that on the basis of such Memo the benefit extended by the Board was irregular and the Board was directed to recover overdrawal pay and allowances from employees who had been extended such benefits.

14. In pursuance thereof the Board on 28th April, 2006 issued an order revoking the benefit of CAS for the Muster Roll Employees with effect from the date they had been allowed including the appellant herein. This order *inter alia*, categorically states that the Muster Roll and the contractual employees of the Board have been extended the same benefit which makes it abundantly clear that the writ petitioner was appointed and had worked as a Muster Roll Employee for the period concerned.

15. In order to ameliorate inconvenience that may result due to such recovery the Board passed a resolution in its 139th Board meeting held on 3rd March, 2008, *inter alia*, to the effect that the recovery may not be

effected to and the Board would condone such overdrawal by the respective employees during the relevant period. The said resolution has also categorically stated that the decision to take into account the past service of the incumbents was adopted for those incumbents who had been engaged as employees in the Muster Roll and contractual basis which again makes it clear that the petitioner was engaged as a Muster Roll Employees.

16. In its 140th Meeting held on 16th September, 2008 the Board adopted a resolution to the effect that the past service of erstwhile Muster Roll Employees would be taken into account for calculation of only superannuation benefit and to the government may be moved for necessary approval. The agenda No.8 of the said meeting would clearly show that the past services rendered by the erstwhile Muster Roll employees were taken into account thereby again crystallising the fact that the writ petitioner appellant was the Muster Roll Employee.

17. It is submitted that subsequently the State Government in its communication to the Board dated 12th January, 2011 *inter alia*, stated that the service book of the writ petitioner shows that he had served as a Muster Roll worker from 29th March, 1996 and had joined the post of technician as a regular employee from 21st March, 1996. Accordingly, the Pension Sanctioning Authority was requested to comply with the aforementioned observation which makes it clear that the writ petitioner would not be entitled to receive such pensionary benefit. Thereafter, the Board adopted a resolution in its 150th Meeting on 2nd September, 2011 in which the resolution adopted in its 139th and 140th Meeting was reviewed and the proposal for recovery of excess salary was approved by the Board being

agenda no.12. Following such decision an order was passed by the Board on 3rd November, 2011 *inter alia*, stating that the period of service rendered by the writ petitioner as a Muster Roll Employee would not be taken into consideration for the calculation of its service in regular establishment and also further revoked the benefit extended to him.

18. As a consequence the Board passed an order dated 21st November, 2011 whereby the appellant was directed to refund a sum of Rs.66,087 payable on account of refixation from his retiral gratuity. The Board thereafter by a letter dated 22nd November, 2011 intimated the writ petitioner that his service has been regularized with effect from 21st March, 1996 instead of 29th March, 1986 and that the overdrawal amount is to be recovered from the retiring gratuity.

19. Mr. Bihani has submitted that the Board was willing to extend such benefit on an understanding that a Muster Roll Employee would also be entitled to such benefits and had extended such benefits to the writ petitioner but the said decision was recalled by reason of the clarification issued by the Government thereby clarifying that the period of service rendered by an employee as a Muster Roll Employee would not be taken into account for the calculation of his service in regular establishment and for that reason the benefit was recalled and differential amount is now payable by the writ petitioner.

20. It is submitted that the status of the appellant as a Muster Roll Employees was never in dispute since the day he joined the establishment and the Board as a beneficiary measure extended the benefit of CAS to the

writ petitioner along with others, having regard to the services they have rendered in the past to the Board.

21. Mr. Ayan Banerjee, the learned Counsel for the State respondents supported the decision to treat the writ petitioner as a daily rated wage earner until he was absorbed on 21st March, 1996 and accordingly he is entitled to get the benefit from his initial appointment on 22nd July, 1986.

22. Mr. Banerjee has submitted that the resolution adopted at 150th meeting of the Board held on 2nd September, 2011, inter alia, holding that the decision of the Board adopted in its 139th and 140th meeting may be reviewed and suitably revised was to ensure superannuation benefits of all the concerned employees and the proposal for recovery of excess salary was approved by the Board in its agenda no. 12. In view of the said resolution the observation of the Member Secretary of the Board to the effect that the employees were not on Muster Role but are Work Charged cannot be relied upon as the said decision was subsequently modified in the 150th meeting. There is no document or record suggested that the writ petitioner was a Work Charged employee. The observation in the 140th Meeting was without any document in support of such claim and thus cannot be taken to be a guiding factor to ascertain whether petition was Muster Roll or Work Charged employee. The decision was taken strictly on the basis of the documents produced by the respective parties. Conferment of CAS benefit to petitioner was a one time beneficial measure extended to the Muster Roll employees. However, such conferment would not change the nature of

employment of the petitioner. Documents reveal that right from his appointment the petitioner was treated as a Muster Roll Employee.

23. The short question that arises for consideration in this appeal is whether the writ petitioner was a Work Charged Employee or a Muster Roll Employee.

24. PWD Manual to which reference has made by Mr. Majumder shows that ward 'Establishment' would include such Establishment as is employed upon the actual execution of a specific work or a sub-work of a specific project as distinct from the general superannuation. When the employees borne on the temporary establishment are employed on work of this nature their pay for the time being would be charged direct to the work.

25. Work Charged Employees are normally engaged on a temporary basis for the execution of a specified work and their service is co-terminous with the execution of the specific work. They do not get any benefit under the Payment of Gratuity act. However, they are in a better position than temporary servants who are liable to be thrown out of employment without any kind of compensatory benefits (see. ***Jaswant Singh v. Union of India (UOI) & Ors.***²)

26. The Muster Roll Employees are daily rated wage earner. Payments of Muster Rolls are confined to day labourers only and under the relevant guidelines in the manual they should never be extended to permanent and temporary employees whose pay is charged to the head establishment or to the members of the Work Charged employment. The document relied upon by the Board to show that the petitioner has to be

² 1979(4) SCC 440

considered as a Muster Roll Employee and not a Work Charged Employee is difficult to accept in view of a fixed scale of pay, a post which he continued to hold for the last 10 years before he was made permanent on 29th March, 1996. The petition on 28th December, 2001 opted for fixation of his pay under the Career Adjustment Scheme (CAS) with effect from 29th March, 1996. He had also received emoluments prior thereto.

27. The order Memo No.3488 dated 8th January, 2002 issued on behalf of the Board also shows that benefits of ROPA 1991 and 1998 were extended to him. If the petitioner were to be considered not as a Work Charged Employee and only a daily rated labourer then the benefit of ROPA 1991 could not have been extended to him which was possible only if he was treated as a Work Charged Employee with a definite pay scale. The pay scale was fixed on the basis of ROPA 1991 and subsequent ROPAs that came into operation during his service career.

28. As rightly pointed out by Mr. Majumder the daily rate has no relevance since his grade pay was fixed in January, 1996 on the basis of ROPA 1991 which is possible only if he was a Work Charged Employee. The column with daily rate is to be multiplied by 22 days for the purpose of calculation of his monthly salary. If he is a daily rated worker then maximum ceiling of monthly emoluments could not have been mentioned as a daily rated worker is not entitled to emolument. Moreover, the Muster Roll Bill disclosed by the Board shows that the petitioner was working under the office/project which supports his claim as a Work Charged Employee. The Board also in its 140th Meeting held on 16th September, 2008 has approved agenda no.8 with the resolution of 139th meeting which is reproduced below:

“Agenda Item No.8: Regularisation of service of the erstwhile Muster roll employees under the different projects of the West Bengal Pollution Control Board

Members opined that Muster roll employees cannot be regularised. They resolved to regularise only contract employees (not Muster roll employees) as per norms after confirmation by Department of Environment. It can be taken up only for regularisation against sanctioned posts. Member Secretary explained that the person concerned were on work-charged service and not Muster Roll worker/employees Board members noted and approved.” (emphasis supplied)

29. It clearly shows that the Board has clearly acknowledged that the petitioner was working as a Work Charged Employee on a contractual basis and not a Muster Roll Employee.

30. The attendance register/pay register of January/February 1996 describes the writ petitioner as MR SAE. The order dated 5th December, 2001 of the Board allowing benefit of CAS 1990 to 21 employees which, inter alia, include the petitioner describing all of them to be the “Work Charged Employee” of the Board and subsequently 21 of them were absorbed in the regular establishment taking into consideration their past service and out of the said 21 employees 17 were granted the benefit of CAS, 1990 pursuant to the said order and in furtherance of the aforesaid order on 24th December, 2001 the writ petitioner was accorded sanction of benefit of CAS and was described as “MR/Work Charged and Regular Employee”. On 1st January, 2002 in the officer order the writ petitioner was described as “MR/Work Charged and Regular Employee” wherein the pay of the writ petitioner was fixed in the first higher scale of pay with effect from 29th March, 1996. In the

139th Board meeting held on 3rd March, 2008 against agenda no.8 the “service before absorption” was considered to be “temporary”. The engagement was considered to be in Muster Roll and contractual basis. In 140th Board meeting held on 16th September, 2008 against agenda no.8 the writ petitioner was described to be under “Work Charged Service” and not “Muster Roll Worker/Employee”. It also opined that Muster Roll Employees cannot be regularized and it was resolved to regularize only contractual employees. All these material pre-eminently suggest that the writ petitioner was appointed as a Work Charged Employee.

31. Mr. Bihani has disclosed the agenda and minutes of the 139th, 140th, and 150th board meeting to emphasise that he was not treated as a Work Charged Employee and he continued to work as a daily rated employee till he was absorbed with effect from 29th March, 1996 against sanctioned post. However, on consideration of the agenda and the board minutes it is crystal clear that at the earliest point of time in the 139th board meeting when the case of the writ petitioner was considered on the basis of the available record the Board had opined that he is a Work Charged Employee and it was resolved that only contract employees and not Muster Roll employees shall be regularized.

32. It appears sometimes the Board has used the term ‘Work Charged’ and ‘Muster Roll’ interchangeably but what is apparent from the record disclosed by the Board the petitioner was appointed in a project and he was considered to be a Work Charged Employee since inception.

33. The decision to withdraw such benefit was on the basis of a communication received from the Government. It seems that the

government was not properly apprised of the post to which the writ petitioner was appointed. The submission that the writ petitioner was unable to produce any document which would indicate that he was engaged as a Work Charged Employee is unacceptable in view of the materials on record and the documents disclosed to which we have referred earlier. In any event, the board is in possession of all the required documents. On the basis of the documents disclosed in this proceeding, it cannot be said that the writ petitioner was not engaged as Work Charged Employee. In fact the Muster Roll No.1870/573d-7/50 for the period 22nd January, 1996 to 21st February, 1999 would clearly establish that he was appointed in the official project.

34. The resolution adopted at the 150th meeting of the Board held on 2nd September, 2011 was consequent upon the clarification issued by the Finance Department which does not say that the work charged employee would not be entitled to such benefits. Accordingly, the benefits extended to the writ petitioners could not have been recalled on the strength of the resolution adopted at 150th Meeting. It cannot be presumed that the decision of the Board to treat the writ petitioner as Work Charged Employee was without any record.

35. It is also important to note that it was only by reason of the letter issued by the State Government dated 12th January, 2011 *inter alia*, stating that the service book of the petitioner shows that he had served as a Muster Roll Worker from 29th March, 1996 and had joined the post of technical as a regular employee from 21st March, 1996 that earlier benefit extended to the writ petitioner was withdrawn. It appears that the State

Government has overlooked the fact that the petitioner was appointed at a project and he was all throughout treated as a Work Charged Employee by the employer until the State Government issued the letter dated 12th January, 2011. The Board is the best person to decide on the status of the petitioner. The Board all throughout accepted the writ petition to be a Work Charged Employee. Irrespective of the fact whether at some places his status was also shown as Muster Roll Employee. A '/' (slash) is put in between WC and MR and at places as WC (MR) would not make much difference as overwhelmingly his appointment was shown in a project and he was treated as a Work Charged Employee. The Board accepts that if the petitioner is considered as a Work Charged Employee the service spent on work charge can be counted as qualifying service for pension. It is also important to note that none of the respondents have contended that a Work Charged Employee on absorption and regularisation cannot claim benefit of past service for pensionary benefits. It would even otherwise be unjust and irrational to deprive him of such pensionary benefits. When he worked continuously for 10 years before absorption and based on such length of service certain benefits was extended to him on absorption.

36. In view of the fact that the Board had all throughout admitted the writ petitioner working in a project and he was treated as a Work Charged Employee as would be evident from 139th and 140th meeting the Board could not have acceded to the request of the State Government and revoke the benefit extended to the writ petitioner as the basis of the order dated 14th December, 2018 is factually incorrect.

37. On such consideration, we are of the view that the impugned order dated 14th December, 2018 issued by the Director Pension Provident Fund and Group Insurance cannot be sustained and is hereby set aside as a consequence whereof the appeal and the application are allowed and the order of the learned Single Judge dated 12th December, 2019 is set aside.

38. However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)