D/L9
15.05.2025
Rohit
ct.no.04

WP.ST 44 of 2025

Nikhil Ranjan Biswas
Versus
The State of West Bengal & Ors.

Mr. Prantick Ghosh
Mr. Prasad Bhattacharyya
Ms. Shravani Ghosh
...for the Petitioner

Mr. Lakshminath Bhattacharya
Mr. Rajib Kumar Acharyya
Mr. Banshi Badan Maity
Mr. Goutam Malik
...for the Respondent No. 8

1. The writ petitioner was the applicant before the Tribunal. He filed O.A. No. 566 of 2024 being aggrieved by withholding of all his post retiral dues on the ground of pendency of a criminal case in which he is an accused, instituted while he was in service.

2. The petitioner was serving as a health inspector. While serving as such one Swarupnagar Police Station FIR No. 401 of 2021 has been instituted against him wherein there is an allegation of abusing his official position and taking money from several persons.

3. The petitioner has attained the age of superannuation on 31.10.2024. Prior to his retirement the authorities namely the Chief Medical Officer of Health, North 24 Parganas has come out with a communication dated 23.10.2024 wherein it is stated that investigation of the case is going on. Under such circumstances the concerned has been directed not to disburse payments relating to the petitioner’s superannuation till further instructions. The letter also speaks about a contemplated departmental proceeding against him, regarding which there are no details whatsoever.
4. It is under such circumstances that the petitioner approached the West Bengal Administrative Tribunal (SAT for short). O.A No. 566 of 2024 filed by the petitioner, challenging the communication dated 23.10.2024 was rejected by the Tribunal bringing the petitioner before this Court assailing the order of the SAT dated 21.01.2025.
5. It is submitted by learned counsel for the petitioner that till such time there is a finding in either a judicial or departmental proceeding regarding any pecuniary loss caused to the Government, withholding of his superannuation benefits is unsustainable.
6. The learned AGP appears on behalf of the State.

7. He has fairly submitted that the petitioner at best can claim benefit of the deposit towards his provident fund, group insurance and leave encashment. According to him the benefits under the pension and gratuity cannot be paid to the petitioner. He has placed reliance on the provisions contained under the West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971 (hereinafter referred as the Rules).
8. The learned AGP has placed reliance on Rule 10 to submit that a bare reading of Rule 10(1) reveals that the Rule provides the source of power for the Governor to withhold or withdraw a pension, or any part of it permanently or for a specified period. The Rule further provides the Governor the power for ordering the recovery from a pension of the whole or part of the pecuniary loss caused to the Government. He thus submits that Rule 10(1) provides the source of power for withholding the petitioner's pension.
9. Insofar as the dues under the head 'gratuity' is concerned he submits that Rule 10(2) provides for withholding of gratuity. In view of the submissions advanced on behalf of the State we consider it to quote herein the two provisions being relied upon. 10(1) of the Rules reads as follows:

"10.Right of the Governor to withhold pension in certain cases.-(1) The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement:
Provided that —

.....

(2) Where any departmental or judicial proceeding is instituted under sub-rule (1) or where a departmental proceedings iscontinued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension; but no gratuity of death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon."

10. A bare reading or Rule 10(1) reveals that the withholding or withdrawing of pension or the right to order recovery from pension under Rule 10(1) is in relation to any pecuniary loss caused to the

Government. If the petitioner is found guilty of grave misconduct or negligence during the period of his service. Such finding is required to be recorded in a departmental or judicial proceeding. It is not the case of the State that there is any finding in any departmental or criminal proceeding, holding the petitioner guilty of any charges whatsoever. In absence of such finding of any grave misconduct, negligence or any offence having been committed, the question of quantification of any pecuniary loss, in our opinion does not arise whatsoever. In the present case it is the case of the State that judicial proceedings were instituted while the petitioner was still in service. The petitioner thereafter has attained the age of compulsory retirement and thus in view of the specific provisions contained in Rule 10(2) is entitled to be paid during this period, commencing from the date of his retirement up to the date on which the judicial proceedings conclude and final orders are passed thereupon, a provisional pension in terms of Rule 10(2). Rule 10(2) however in unambiguous terms mandates that no gratuity or death-cum-retirement gratuity shall be paid to him until conclusion of such proceedings.

11. There is no dispute regarding the petitioner's claims under the heading of provident fund, group

insurance and leave encashment. Upon consideration of the provisions contained in Rule 10(2) we find that the same provides a basis for withholding the benefit of gratuity only. In so far as pension is concerned Rule 10(2) contemplates grant of provisional pension to the employee in the present facts and circumstances noted above.

12. In view of the above consideration we find the order of the Tribunal rejecting the petitioner's claim to be unsustainable. The order passed by the Chief Medical Officer of Health dated 23.10.2024 in so far as it restrains the concerned authorities from disbursing payments relating to his superannuation is found unsustainable.

13. The petitioner is entitled to receive payments under the heading Provident Fund, Group Insurance, leave encashment and provisional pension. The authorities are thus directed to take steps to ensure payment/s within a period of eight weeks from the date of receipt/ production of a copy of this order.

14. We, therefore, find that the order of the Tribunal dismissing the petitioner's original application is unsustainable. The order of the Tribunal is set aside.

15. The writ petition stands allowed, but with no order as to cost/s.

(Madhuresh Prasad, J.)

(Partha Sarathi Chatterjee, J.)