HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 11237 of 2024

Dr. Pankaj Panwar

Vs.

The State of West Bengal & Ors.

For the Petitioner	:	Mr. Ranjit Chatterjee, Mr. Aniruddha Mitra.
For the State	:	Mr. Swapan Kr. Datta ld.AGP., Mr. Rajat Dutta.
For the ICAR	:	Mr. Bijoy Kumar
For the Respondent No.4	:	Mr. Amales Ray ld.Sr.Adv., Ms. Mousumi Bhowal, Mr. Aman Gupta, Mr. Ishan Bhattacharya.
Heard on	:	18.02.2025
Judgment on	:	18.02.2025

JAY SENGUPTA, J:

1. This is an application praying for direction upon the respondent authorities to grant the petitioner's service gratuity in lieu of monthly pension for his service under the respondent/University for 06 years 07 days between

29.08.2002 to 04.09.2008, for direction upon the respondents to transfer a sum of Rs.1,74,648/- on account of service gratuity in lieu of pension for service of the petitioner under the respondent/University to the present employer being the respondent no.5 and for cancellation of any observations of the Finance Department, Pension Branch of the State Government as contained in communications of the Agriculture Department dated 09.02.2021 (incorrectly mentioned as 09.02.2020) and 12.12.2023 holding that the petitioner was not entitled to service gratuity.

2. Learned Counsel appearing on behalf of the petitioner submits as follows. The writ petitioner joined the Indian Council of Agricultural Research ("ICAR", for short) on 06.09.2008 upon technical resignation from the respondent/University, Uttar Banga Krishi Viswavidyalaya ("UBKV", for short) after rendering service of 06 years 07 days (between 28.08.2002 and 05.09.2008). For counting past service of the petitioner under UBKV, the service benefits to which the petitioner was and/or is entitled to, should be transferred to his present employer/respondent no.5. While pro-rata gratuity and leave salary have been duly transferred, the service gratuity (in lieu of pension) to which he was also entitled, has not been released to UBKV for onward transmission to the respondent no.5. Such denial would result in the service of the petitioner under the UBKV not being counted with his service under the respondent no.5 and consequent denial of coverage under CCS Pension Rules, 1972 (as amended) since the New Pension System (NPS) came on 22.12.2003 with effect from 01.01.2004. Reference is made to the

applicable Rules/Notifications as well as the UBKV Act, 2000. The note sheet of the Finance Department revealed that the prayer of the petitioner was rejected on the misconceived plea that the case of the petitioner was not that of superannuation. It was settled law that a decision/order of an authority impugned in the writ petition cannot be improved by filing affidavits. Reliance is placed on ***Mohinder Singh Gill's*** Case reported at 1978(1) SCC 405. The writ petitioner, accordingly, prays for direction upon the respondent nos.1 to 4 to transfer a sum of Rs.1,74,648/- on account of his service gratuity under the UBKV to his present employer/respondent no.5 along with interest 8% per annum.

3. Learned Counsel appearing on behalf of the respondent nos.1 and 3 denies the allegations and submits as follows. The present case relates to the claim of service gratuity of the writ petitioner who rendered 06 years 07 days of service as a lecturer, which is not less than 10 years, under the UBKV. He did not retire from the UBKV on superannuation. The retirement gratuity of the petitioner was calculated in terms of applicable Rule 11 of The West Bengal Aided University Death-cum-Retirement Benefit Scheme, 1999. Hence, pro-rata gratuity and leave salary was released in his favour vide sanction order dated 13.09.2017. The petitioner then joined a different organisation being the ICAR as a senior scientist where he was absorbed subsequently. The Finance Department, Pension Branch has held that the question of admissibility of further service gratuity to the petitioner did not arise as per extant norms. This was intimated to the UBKV by a letter dated

12.12.2023. The past service of the petitioner under the UBKV for only 06 years 07 days, which was less than qualifying service of 10 years, did not entitle the petitioner to service gratuity at all. Consequently, no further service gratuity was admissible to the petitioner as rightly held by the Finance Department. The petitioner's claim for similar treatment like the two instances cited by him had concurrence by the Finance Department, which was absent in this case.

4. Learned counsel appearing on behalf of the respondent no.4 submits that as per extant norms, the petitioner is entitled to service gratuity, which should be transmitted to his present employer and in at least two other cases, similarly circumstanced individuals had been granted such benefit.

5. I have heard the learned counsels for the parties and have perused the affidavits and the written notes of submissions.

6. Clause 67 of The West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 provide as follows:- "Amount of pension- The amount of pension is regulated as follows: (A) Gratuity- After a service of less than ten years a gratuity at the rate specified below irrespective of whether he has opted in favour of any rule or not….."

7. Therefore, it is elementary that a service less than 10 years entitles an employee to get such service gratuity. Even in terms of Rule 11 of the West Bengal State Aided University (Death-cum-Retirement Benefit) 1999, an employee who is retiring with at least 05 years of qualifying service will be

entitled to retirement gratuity at a particular rate. This does not negate the entitlement of the employee to get service gratuity in terms of the West Bengal Services (Death-cum-Retirement Benefit) Rules 1971.

8. It appears that the Finance Department was totally oblivious of this and went to the extent of saying that since the petitioner did not superannuate or even complete 10 years of service, he was not entitled to service gratuity. Had the petitioner completed 10 years of service, he would have been entitled to pension benefits.

9. It is also surprising to note that two other similarly circumstanced individuals namely, Dr. Amlan Kumar Ghosh and Dr. Sushanta Kumar Dash have been granted such benefit. As such, it shall not be open to the State to claim that it was because in such case the Finance Department had granted sanction and in the present case the sanction was not granted. The whole act of granting sanction in such cases cannot be so arbitrary and injudicious.

10. There is much merit in the contention of the petitioner that for counting such service under the UBKV, the service benefits to which he was entitled should be transferred to the present employer. In fact, the petitioner's pro-rata gratuity and leave salary have already been transferred.

11. In view of the above, the impugned observations of the Finance Department, Pension Branch as contained in communications of the Agriculture Department

dated 09.02.2021 (incorrectly dated 09.02.2020) and 12.12.2023 are set aside and the respondent nos.1 to 3 are directed to grant the petitioner's service gratuity in lieu of monthly pension for his service under the respondent/University for 06 years 07 days between 29.08.2002 and 04.09.2004 and transfer the appropriate sum on account of service gratuity in lieu of pension to the respondent no.4, who in turn, would transmit the same to the petitioner's present employer namely, the respondent no.5.

12. With these observations and directions, the writ petition is disposed of.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Jay Sengupta, J.)

NB/01