

FMA 578 of 2025
CAN 1 of 2024

State of West Bengal & Ors.
Vs.
Biswajit Das & Ors.

Mr. Sirsanya Bandyopadhyay, Sr. St. Counsel
Ms. Tapati Samanta ... for the appellants/ State

Mr. Atanu Biswas
Mr. Mrinal Saha ... for the writ petitioner respondent no. 1

CAN 1 of 2024 (Section 5)

1. There is a delay of four months and five days in filing the appeal.
2. We are satisfied with the explanation offered for not being able to file the appeal within the period of limitation. The delay of four months and five days is condoned.
3. Accordingly, the application for condonation of delay is allowed and disposed of.

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4. By consent of the parties the appeal and the application are taken up together and disposed of by this common order.
5. The writ petitioner was appointed to the post of Librarian of a Government sponsored rural library at Burdwan on 22.6.1984. He retired from service on attaining the age of superannuation on 30.01.2019. It was after his retirement the respondent authorities sought to withdraw the ten years' to be the Career Advancement Scheme (CAS) incremental benefits extended to the writ petitioner since August 1984. In between the respondent filed a writ petition in C.O. 9580 of 1996 praying *inter alia* for higher scale of pay for acquiring higher qualification. The said prayer was allowed on 19.9.1986 and attained its finality with

the dismissal of the Special Leave Petition (SLP). In pursuant to the order dated 09.9.1996 the authorities released higher scale of pay in favour of the writ petitioner on April 1999 with effect from June, 1986.

6. The petitioner thereafter was placed in the scale of pay of Rs. 1390/- - Rs.2970/- (Scale No. 10) from scale of pay Rs.1040/- - Rs.1920/- (Scale No. 6) with effect from January 1986. It was only after his retirement that the appellant seek to withdraw the 10 years' benefit by issuing a Memorandum No. K/RM/L/00051/2019 dated May 08, 2019.

The relevant portion of the Memo is quoted below.

“As per Finance Department’s U.O. No. Gr. P-1/2018-19/0036 Dated 03.05.2018, 10 years benefit should not be allowed w.e.f. 19.08.1994. Therefore, pay may please be re-fixed w.e.f. 19.08.94 to the date of Superannuation and overdrawal if any may please be refunded through Treasury Challan.”

7. On a challenge being thrown to the said order by filing a writ petition being W.P.A. 9904 of 2021, the said writ petition was disposed of by an order dated 08.09.2021 by which *inter alia* following direction was passed.

“In view of the above, the instant writ petition is disposed of by directing the respondent No. 6 being the Director, Directorate of Pension, Provident Fund and Group Insurance to take a decision with regard to the representation dated 4th November, 2019 annexed at page 59 of the writ petition made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to the petitioner or his authorized representative and all other necessary parties, at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to the parties immediately thereafter.

In the event, if it transpires that the pension of the petitioner was wrongly re-fixed, then the said authority shall take steps to refund the amount which the petitioner is entitled to in accordance with law.”

8. In compliance of the aforesaid order the case was considered by the Director, Directorate of Pension, Provident Fund and Group Insurance, Government of West Bengal. The said

authority passed a reasoned order and communicated to the same to the writ petitioner by a Memo Dated 09.12.2021. The said authority, however, held that the petitioner would not be entitled to the 10 years' CAS benefits. The said benefit was withdrawn on the strength of the government order dated 30.8.2018 issued by the Director of Library Services, West Bengal. The said order relates to three petitioners who are not the parties to the writ petition. The similarity of the case of the three petitioners named in the government order dated August 13, 2018 was not disclosed in a proceeding before the learned Single Judge and accordingly, the learned Single Judge, has held that the said Memo was applied in the case of the petitioner without evaluating whether the writ petitioner in the present case was at par with the three persons named in the said memorandum. However, it is apparent from the government order dated 12.6.2017 which reads as follows.

“However, the cases where pay have been fixed/ settled under Court Orders with due concurrence of Finance Department irrespective of whether the concerned employees retired or in service shall not be reopened.”

9. Mr. Bandyopadhyaya, learned senior standing counsel has submitted that the government order was considered in the impugned order dated 08.9.2021 and it was distinguished on the ground that the 10 years' incremental benefit was not granted to the writ petitioner on the basis of any Court order and hence it can be re-opened. Mr. Bandyopadhyaya, further submitted that on a conjoint reading of the memo at paragraph 4 dated 28.10.2016 and 12.6.2017, it would be clear that the government was precluded from realizing any amount overdrawn by reason of re-fixation in terms of the government order dated 28.10.2016, therefore, does not renew the power of

the existing employees and also does not deny the re-fixation of the pension .

10. The Finance Department notification dated 28.10.2016 clarified the implementation of CAS / MCAS (Modified Career Advancement Scheme) in respect of employee enjoying higher scale under Court orders. The government appears to have taken a decision that in cases of retired employees whose pension has been settled by Court orders should not be reopened. Subsequently, by another notification dated 12.6.2017 the notification dated 28.10.2016 was amended and the last sentence of paragraph 4 of the notification dated 28.10.2016 was substituted with the following:

“However, the cases in which the employees concerned have already retired and their pension cases have already been settled by the orders of the Hon’ble Court or otherwise, need not to be reopened.”

11. It may be since Mr. Bandyopadhyay has argued that it may have given a double benefit to an employee in the sense of being benefited by higher scale of pay in view of acquiring higher qualification with the initial 10 years’ CAS benefits but having regard to the decision taken by the government in this regard as reflected in the order dated 12.6.2017, it is no more open for the authority concerned to re-open the settled position and deny the benefit to the writ petitioner.
12. In such view of the matter, we concur with the conclusion arrived at with the learned Single Judge that the case of the petitioner is protected in terms of the government order dated 12.6.2017 and could not be reopened in the year 2019 after the retirement of the petitioner.
13. The appeal fails.

14. On the prayer of Mr. Bandyopadhyay, time to comply with the order of the learned Single Judge is extended by one month from date. The authority shall fix the pension of the petitioner within the aforesaid period.
15. The appeal and application are disposed of.
16. However, there shall be no order as to costs.

(Soumen Sen, J.)

(Smita Das De, J)