
(2003) 02 CAL CK 0005
In the Calcutta High Court
Case No : Writ Petition No. 192 (W) of 2002

Bimal Kumar Mishra and Another	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : (2004) 1 CALLT 250

Hon'ble Judges : Maharaja Sinha, J

Bench : Single Bench

Advocate : Chandan Mishra, for the Appellant; Mitali Bhattacharyya, for the Respondent

Judgement

M. Sinha, J.—The first writ petitioner herein is the father of the second writ petitioner. The first writ petitioner on or about 23rd March, 1973, was appointed as a Shramik in the Debagram Group Electric Supply of the West Bengal State Electricity Board. Since his appointment, it is stated, the first writ petitioner discharged his duties sincerely, honestly and to the complete satisfaction of all concerned. In his entire service career the writ petitioner, it is stated, never faced with any complaint from his employer on any account and no disciplinary proceedings or any proceeding had or have ever been initiated against him so long he rendered his services as an employee of the West Bengal State Electricity Board (hereinafter referred to as the Board).

2. The first writ petitioner is still in service and is due to retire on 31st May 2002, on attaining the age of superannuation of 60 years. A certificate in this regard, has been issued by the assistant Manager, Public and Accounts, Tehatta Division, Dist. Nadia, of the said Board.

3. In March 1997, While on duty, the first writ petitioner fell seriously ill due to a severe cerebral attack and because of such attack the first petitioner became completely invalid and consequently bed-ridden. Since his said attack the first writ petitioner had and has not been able to join his duties.

4. According to the service condition of the first petitioner herein, the first petitioner, on or about 16th December, 1977, was taken to the Chief Medical Officer, of the West Bengal State Electricity Board at Bidyut Bhawan, for medical examination. The writ petitioner on that day i.e. 6th December, 1977, was thoroughly examined and it was found that he became totally unfit for his normal duties. The necessary certificates in this regard are annexed to the writ petition being annexure "P-1" and "P-4" to the writ application appearing at pages 19 and 23 thereof.

5. After having been completely invalid the first petitioner on or about 22nd December 1977, applied to the secretary of the said Board, the first respondent herein, for premature retirement on medical grounds. The said application, according to the first writ petitioner, was made through proper channel.

6. In the said application it was pleaded that the first petitioner was seeking voluntary retirement against suitable employment of his son, the second writ petitioner herein, Ganesh Chandra Mishra, who was and is his dependant. It was mentioned therein that there was no other earning member in his family, a family consisting of seven members. The first petitioner appealed to the Board that if no appointment was given to the said dependant son, the second writ petitioner herein, then and in that event the whole family of the first petitioner would starve.

7. The said application was highly recommended and forwarded by the competent officers of the concerned zone and district and also the concerned senior Station Superintendent of the Board. A copy of the said application with the said recommendation is Annexure "P-2" to the writ application appearing at page "20" thereof.

8. Later the petitioners came to know that the 5th respondent herein namely, the Zonal Manager, of the Board at Baharampur "D* zone, Dist. Murshidabad by his letter dated 5th January 1988, duly forwarded the said application of the first petitioner herein to the Chief Engineer (District), of the said Board at Bidyut Bhawan, Salt Lake City, with his due recommendations for taking necessary steps in the matter.

9. The senior personnel and administrative officer, the second respondent herein, by an office order dated 16th October 1998, sent the report of the said medical examination of the first petitioner along with the reports of other affected employees to the respective districts including the Divisional Engineer of the Board at Krishnanagore, wherein the date of medical examination of the first petitioner herein was shown as 16th December, 1997.

10. Needless to mention that on the said examination the first petitioner was found completely invalid due to the said cerebral attack in the month of March 1997, while the petitioner was on duty.

11. In spite of making the said application for early retirement and for

employment of his son against such early retirement of the first petitioner the concerned respondents, it is alleged, did not take any steps pursuant to the said application of the first writ petitioner though the concerned authorities assured the first petitioner that steps would be taken very soon regarding the employment of his son against his early retirement.

12. Instead of proceeding with the application of the first petitioner for early retirement and for consideration of the case of employment of his son against such early retirement the first petitioner received a letter from the Station Superintendent of the Board at Debagram, dated 2nd December, 2000, whereby the first petitioner was asked to appear once again before the Chief Medical Officer of the Board. The first petitioner in fact, was asked to attend the concerned medical officer at Bidyut Bhawan, on 14th December, 2000, at 12 noon, with all medical papers at the chamber of one Dr. A.K. Ghosh, being the concerned Chief Medical Officer.

13. The first petitioner however was taken to the Chief Medical Officer of the Board on 14th December, 2000, once again though the first petitioner was unable to move as he was completely invalid and bed-ridden due to, the said cerebral attack in March 1997.

14. The second respondent herein, the senior personnel and administrative officer, industrial cell of the Board, of Bidyut Bhawan, on 24th August, 1999, issued a letter to the Divisional Engineer, Tehatta Division, of the said Board requesting him to arrange for submission of particulars of the first petitioner such as date of birth, date of entry in the board service, credit balance of his earned leave, approximate pension and gratuity admissible to the first petitioner etc.

15. In spite of the said letter, however, asking for particulars regarding the service record of the petitioner, no steps had or have in fact been taken thereafter by the concerned respondents at all in particular by the Divisional Engineer, Tehatta Division of the Board, Because of such utter inaction on the part of the concerned officer, it is stated, the petitioner remained absolutely invalid, unable to move and in consequence thereof the family of the petitioner was facing acute hardship and in fact starvation.

16. The Chief Medical Officer, however, it is stated, expressed his dissatisfaction for the harassment caused to the first petitioner since the first petitioner was already declared totally unfit, after proper medical examination, on 16th December 1997. However after examining the first petitioner, on 14th December, 2000, the Chief Medical Officer submitted his report once again.

17. Since no steps were taken by the concerned officer of the Board pursuant to the said letter dated 24th August, 1999, the second respondent herein, again on 30th May, 2001, wrote to the Divisional Engineer of the Board at Tehatta Division, Nadia, regarding the application of the first petitioner for early retirement against the employment of his son. The Divisional Engineer was requested to inform "Up to date leave balance in the credit" of the first petitioner

"and the last day of his attending duty".

18. The Divisional Engineer, Tehetta, the second respondent herein, this time however informed the details of leave enjoyed by the first petitioner herein, by an office order dated 27th June 2001. It is mentioned therein that from 19th January, 2000, to 30th June 2001, the first petitioner enjoyed 288 days earned leave, casual leave andand 79 days extra-ordinary leave up to 30th June 2001. It was also mentioned that no earned leave was due to the first petitioner.

19. The writ petitioners, however, came to know that the Divisional Engineer, Tehatta, the second respondent herein, asked the senior Station Superintendent, the sixth respondent herein, to prepare a list of total days of absence of the first petitioner and in the prepared list it was shown that the first petitioner was absent from his duties for a total 411 days.

20. According to the first petitioner, however, it is an admitted fact that the first petitioner could not attend his office since he became completely invalid and was bed-ridden since March, 1997. The particulars given in the said list as to how many days the petitioner were unable to attend duties, according to the first petitioner, are incomplete and incorrect inasmuch as according to the first petitioner no leave could be due to him since he was unable to attend his duty since March 1997, from the day of his the said cerebral attack while he was on duty.

21. In paragraph 20 of the writ petition, it is stated, that though the first petitioner was totally invalid and could not attend his duty since March 1997, but considering the pathetic and helpless condition of the first petitioner and his family and considering his past service career the sixth respondent herein, the Station Superintendent, Debagram, was kind enough to release the monthly salaries of the first petitioner month by month up to the month of March 2001, The petitioner received the salaries up to March 2001 at his residence as he was completely bed-ridden and unable to move after his said cerebral attack.

22. The first petitioner however received the impugned memo, addressed to him dated 19th September 2001, from the Manager P and A Industrial Relations of the Board, whereby the petitioner was informed the following:

Memo No.: C/IR/NT/887 Dt: 19/9/2001 To

Shri Bimal Kumar Mishra,

Sramik,

Debagram Gr. E/S,

W.B.S.E. Board,

P.O. - Debagram,

Dist. - Nadia.

Sub: Your prayer for Vol. retirement
against employment of dependent

Dear Sir,

We regret to inform you that your prayer on the above score, cannot be accepted as per provision stipulated in O.O. No. 5477 dated 26.2.97 of the Secretary, WBSEB, as you have 280 days H.P.L. in your credit as on 31.8.2000 and when the same will be exhausted, your age would not permit to accept your prayer.

Under the circumstances you are advised to apply to the Board for accepting your prayer for vol. retirement in terms of Regulation 34(ii) of WBSEBESR, as amended vide O.O. No. 4104 dated 21.1.87 of the Secretary, WBSEB, i.e. without seeking employment of your dependent for quick disposal of the matter.

Yours faithfully,

(S. Dutta)

MANAGER (P & A)

INDUSTRIAL RELATIONS

23. According to the first writ petitioner, however, the said Memo is illegal and was issued without proper consideration of the case of the first petitioner. The first writ petitioner, it is stated, could not attend his office from the month of March 1997 and the date of retirement of the first petitioner, according to the Board, is on 31st May, 2002.

24. It is submitted on behalf of the writ petitioners that according to the policy of the Government and the circular issued by the concerned authorities from time to time the first petitioner was and is legally entitled to make the application for premature retirement on the ground of his illness as he became completely invalid due to the said cerebral attack and in such a case the writ petitioner is entitled to seek employment for a dependant member of his family. The first petitioner, in fact, made such application, when he became completely invalid, in the month of March 1997, seeking employment of his son, who was and is dependant on him, against his premature retirement from his service.

25. An affidavit has been affirmed in opposition to the writ application, on behalf of the second, third, fourth, fifth and the sixth respondents herein. The said affidavit was affirmed, it appears, on 20th day of August, 2002, much after the time allowed by this Court, by its order dated 11th February 2002.

26. It appears from the said affidavit that the West Bengal State Electricity Board or rather the Board made a scheme by its office order dated 16th March, 1995, for consideration of employment of the dependants of the deceased employee subject to fulfilment of certain condition mentioned in the said order.

27. However, by another office order No. 5477 dated 26th February 1997, the

Board made further provisions for consideration of employment, on compassionate ground, of a dependant as defined in the said office order dated 26th February, 1997.

28. A copy of the said office order No. 5477 dated 26th February 1997, is annexed to the affidavit in opposition of the respondents as annexure "R-I" thereto at page 13 of the said opposition. It is provided in the said order that an employee who becomes permanently incapacitated on medical ground or otherwise, not covered by the said earlier office order dated 16th March, 1995, leaving his family in immediate need of assistance subject to the following conditions.

29. The said conditions, as appearing in the said office order dated 26th February, 1997, of the Board, are as follows:

(I) Concerned employee declared permanently incapacitated shall be required to retire prematurely and that he/she shall not be entitled to full pensionary benefits to which he/she would have been entitled too had he/she retired on normal age of superannuation;

(II) He/she has fully exhausted all kinds of leave with pay including commuted leave on medical grounds;

(III) He/she at least 2 (two) years of service or more to reach the age of superannuation;

(IV) The financial condition of the family is so acute in the opinion of the Committee to be constituted for this purpose as to make the appointment essential consequent upon the fall of income due to premature retirement;

(V) That the dependent fulfils the qualification, age etc. as prescribed by the Board for recruitment for specific post and is found suitable.

30. The said order, in fact, also provides the procedure to be followed for consideration for employment on compassionate ground. The said procedure, as appearing in the said office order dated 26th February, 1997, is set out below:

I) An employee intending to retire prematurely in terms of above order shall submit an application to his Controlling Officer i.e. Head of the Project/Power Station/Office/Zone/Division in the prescribed Proforma annexed herewith along with a Medical Certificate to be obtained from Government Hospital or from Board's Hospital/Doctor. On receipt of the said application the said Controlling Officer shall form an Enquiry Committee consisting of at least 3 (three) Officials of the establishment where the applicant is employed. The Committee so formed shall make an Enquiry about genuineness of the claim as also the financial condition of the family of the employee and submit its report to the respective Controlling Officer as above. The Controlling Officer thereafter shall forward the said report along with his comments and the application to the head of the Corporate Personnel Department who shall arrange through Power Department,

Government of West Bengal, for Medical examination of the concerned employee by the Director of Health Service, or by any other Medical Officer, authorised by him for the purpose. On receipt of the Medical report from Director of Health Services, Government of West Bengal, Power Department shall finally decide as to whether the employee concerned shall be declared permanently disabled or otherwise incapacitated rendering him/ her unfit to continue in service. The whole process needs to be completed expeditiously.

II) Only after the concerned employee is declared permanently disabled or otherwise incapacitated, he shall be released from Board's service on premature retirement and thereafter employment of his dependent shall be processed for consideration.

III) An employee allowed to retire prematurely on permanent disablement, or incapacitation, will not be entitled to re-appointment/re-employment.

IV) Special cases where relaxation of any or all the aforesaid conditions is considered imperative such cases would be referred by the Power Department to the Labour Department for examination. The Labour Department will forward the case with their views to the Chief Minister for final decision.

(D. SOM)

Secretary

Dated 26.2.1997

31. In the said affidavit-in-opposition, on behalf of the concerned respondents, it is stated that as per condition "2" of the said office order dated 26th February, 1997, an employee has to exhaust all kinds of leave with pay including commuted leave on medical ground for following the scheme of voluntary retirement against employment of his dependent.

32. It is admitted however that the first petitioner being an employee "Sramik" posted at Debagram Group Electric Supply, applied for premature retirement from the Board's service and prayed for employment of his eldest son on the ground of his permanent disablement.

33. It is stated in the opposition that "on receipt of the said application of the first writ petitioner for voluntary retirement against the employment of his dependent son, on 13th August, 1999, by the corporate office of the Board, the said application was processed in line with the said office order dated 26th February 1997, for acceptance of the voluntary retirement and simultaneous considerations of employment of his dependent."

34. It is however admitted that the first petitioner was examined by the medical Board of the said West Bengal State Electricity Board on 16th December 1997. Upon such examination, however, as aforesaid, the writ petitioner was found to be totally invalid and unable to attend his duties any more. The report of the said medical examination dated 16.10.98, makes the position absolutely clear. The

first petitioner was declared to be totally unfit on the basis of his medical examination by the Board on 16th December, 1997.

35. The first petitioner was, however, again taken to the Chief Medical Officer for examination on 14th December, 2000, and again the Medical Board of the West Bengal State Electricity Board declared the petitioner as unfit for Board service.

36. It is extremely difficult, on my part, to appreciate as to why the first petitioner was taken as aforesaid to the Medical Board for examination while one Medical Board of the said Board declared the first writ petitioner as totally invalid, following the said cerebral attack in March 1997, while the writ petitioner was on duty.

37. From the said office order dated 26th February, 1997, it does not appear that an employee, who has been made permanently invalid on medical ground, has to appear for medical examination more than once. The writ petitioner, as aforesaid, was declared to be totally unfit and invalid on the basis of his first examination made by the medical Board of the State Electricity Board way back in the month of October, 1998, to be precise on 16th October, 1998.

38. In my opinion there was no scope for taking the writ petitioner once again for medical examination on the ground of his permanent illness, which made him completely physically invalid since March, 1997.

39. No reason has been assigned in the affidavit in opposition as to why the first petitioner was taken to the Medical Board for examination again on 14th December, 2000.

According to the concerned respondents upon receipts of the application of the first petitioner for premature retirement from his service against the employment of his son, the application was duly processed and the follow up action was taken by the Board. Certain informations were also sought for from time to time from the local authorities and divisional engineer, Tehatta Division, where the petitioner was rendering his service.

40. The divisional engineer, it is stated, in the said affidavit of the respondents, by his letter dated 31st August, 2000, said that the first petitioner had still 280 days of half pay leave as on 24th July, 2001.

41. In paragraph 11 of the affidavit-in-opposition it is stated that the petitioner has to exhaust all types of leave with pay including commuted leave on medical ground for availing the scheme of voluntary retirement against employment of his dependent.

42. Why this position had to be stated on behalf of the respondents in their opposition is not quite understood as the said office order dated 26th February, 1997, is clear enough and the same is also annexed to the affidavit-in-opposition.

43. However the statements made in paragraph 11, according to me, is absolutely meaningless if not also utterly irrelevant in the context with which I

am concerned at the moment.

44. According to the concerned respondents, at least, as far as their affidavit goes, the case of the first petitioner has been sympathetically considered by in view of the aforesaid circular the scheme of appointment could not be made available to his son. Furthermore, since the first petitioner still had for 280 days half pay leave as on 24th July, 2001, the first petitioner would reach the date of superannuation and as such the application of the first petitioner could not come under the preview of the said scheme.

45. Firstly, it is not understood what is meant by the aforesaid circular issued as per guidelines of the Government of West Bengal. The concerned respondents, however, have relied on the said office order 5477 dated 26th February, 1997, and the first petitioner also applied for premature, retirement on the basis of the said office order on the ground of his permanent illness, by which he has been made completely invalid, against the employment of his dependent son in the Board.

46. It has been merely stated that in view of the aforesaid circular of the Board the scheme of appointment could not be available to his son. What prevented the concerned respondents from considering the case of the first petitioner on the basis of the said office order dated 26th February, 1997, has not been stated or even attempted to be stated in the first place.

47. The order of the Board, by which the application of the first writ petitioner, for premature retirement, was practically rejected is set out hereinabove. The said order is annexure "P-11" to the affidavit-in-opposition appearing at page "30" thereof.

48. From a plain reading of the above order dated 19th September, 2001, of the Board, it is extremely difficult to appreciate or even comprehend as to why the said application of the writ petitioner for premature retirement against employment of his son should be rejected in the first place.

49. From the simple history of this case it appears that the writ petitioner made the application way back on 22nd December, 1997, for premature retirement on the ground of his permanent illness which made him completely invalid and bed-ridden, since March 1997.

50. The said application of the first writ petitioner for premature retirement, no doubt, was made in terms of the provisions or the said office order No. 5477 dated 26th February 1997.

51. Even at the cost of repetition, however, it is mentioned that the said office order dated 26th February, 1997, was issued as the Board decided to consider the employment of a dependent of a permanent employee of the Board, who has been completely incapacitated on medical ground or otherwise, which grounds were not covered by the said earlier office order No. 5233 dated 16th March 1995.

52. The important conditions mentioned in the said office order No. 5477 dated 26th February, 1997, were and are all present in the case of the first writ petitioner herein. The whole basic of the said application for premature retirement of the writ petitioner was that the writ petitioner became completely invalid due to the said cerebral attack in March, 1997.

53. The said office order is, however, set out hereinabove in the judgment. From a plain reading of the conditions mentioned in the said office order dated 26th February, 1997, I have no doubt in my mind that the first writ petitioner herein made the application for premature retirement on the ground of his permanent illness in terms of the said office order dated 26th February, 1997. The conditions mentioned in the said office order were all present in the case of first writ petitioner herein when he made the said application.

54. The first and the most important condition, needless to mention, is that the employee concerned has to be permanently incapacitated on medical ground, the third condition is that the employee must have two years of service or more to reach the age of retirement when he makes the application for premature retirement, the fourth condition is that the financial condition of the family of the first petitioner is so acute due to his permanent disablement that the first petitioner had to apply for premature retirement and sought employment of his dependent son. The second condition that an employee has to fully exhaust all kinds of leave is practically controlled by the first condition as it is provided in the first condition that the employee shall not be entitled to full pensionary benefits to which he or she would have been entitled, had he or she retired at the normal age of superannuation.

55. By virtue of the first condition of the said office order the Board retains the full power, in a case of premature retirement, to allow the said employee the pensionary benefits only according to his entitlement. What pension a particular employee of the Board would be entitled to receive, in a case of premature retirement, will be decided by the Board and the Board alone. When a particular employee, who is seeking premature retirement, has not been able to exhaust all kinds of leave including commuted leave, on medical grounds, is till entitled to retire prematurely under the provisions of the said office order dated 26th February, 1997, as the employee, as provided in the said order, shall not be, in that event, entitled to full pensionary benefits.

56. The Board has, therefore, the power to make the necessary adjustments in this regard. In this connection the statements made by the writ petitioner in his affidavit-in-reply should be considered relevant.

57. In paragraph "8" of the affidavit-in-reply of the petitioner, at page "6", it is stated "Assuming the fact that there are 280 days half pay leave but the first petitioner never claim for payment of such leave period and as such Sub-clause "2" of Clause "5" of the said office order dated 26th February, 1997, cannot stop the employment under the said scheme."

58. In paragraph "10" at page "7" of the said reply it is stated that the first petitioner herein duly applied for voluntary retirement against employment of one of the dependents as back as on 22nd December, 1997, but the concerned respondent deliberately did not take any effective steps in the matter for which petitioners are not in any way responsible..."

59. The above two statements made in the affidavit-in-reply, however, are matter of facts and the said facts have to be accepted that the writ petitioner in fact applied way back in December, 1997, for his premature retirement on the ground of his permanent disablement and sought for employment of his dependent son and that he did not claim the full pensionary benefits either.

60. In this connection again I repeat that in condition one of the said office order dated 26th February, 1997, it is provided that an employee who applies for premature retirement shall not be entitled to full pensionary benefits to which he would have been entitled, had he retired at the normal age of superannuation.

61. In the said impugned order dated 19th September, 2001, the first petitioner has been advised to apply to the Board for voluntary retirement in terms of Regulations 34(2) of the West Bengal State Electricity Board Service Regulations as amended by the office Order 4120, dated 29th January, 1987.

62. At the request of the Court a copy of the said office order, No. 4104, dated 21st January, 1987, was supplied by the learned advocate, on behalf of the State Electricity Board.

63. From the amended Regulation "34" of the said service regulations it appears that if an employee permanent or temporary tenders resignation from a specified date, the appointing authority, may, at its discretion, accept the resignation from that date and require him to pay a sum which should not exceed his pay in the remaining portion of the proper notice period or require him to serve the period of notice. An employee seeking voluntary retirement under this provision is required to give three months notice to his employer.

64. If such notice of three months is given for voluntary retirement by an employee to the Board then that employee may be permitted to retire voluntarily from service of the Board after completing of 25 years of service or on attaining the age of 50 years in respect of class "1" and class "2" employees and in respect of class "3" and class "4" employees on attaining the age of 55 years.

65. It is practically impossible to appreciate as to why the first petitioner was asked by the Board to apply under the provisions of said regulation of 34(2) of the service regulations of the Board, after a laps of nearly four years, cannot be understood.

66. The provisions under Regulation 34(2) of the service regulations of the Board are different provisions. The said provisions have no application shall to the case of the first petitioner herein.

67. The facts of the case of the first petitioner however, are squarely covered by the provisions of the said office order No. 5477 dated 26th February 1997. The writ petitioner correctly applied under provisions of the said office order for his premature retirement on the ground that due to his serious cerebral attack in March 1997, he became completely invalid and was unable to render his services to the Board any more and on that ground the first petitioner was entitled to seek his premature retirement and for employment of his dependent son.

68. The provisions made in the said office order dated 23rd February, 1997, therefore, are the only provisions in the service regulation of the first petitioner under which the writ petitioner was entitled and had the right to apply for premature retirement and sought for the employment of his son on the ground of his permanent disablement and the Board had and has the corresponding obligations, to consider the said application on its merits.

69. The authority concerned not only passed the said impugned order dated 19th September, 2001, mechanically but in passing the said order the Board failed to take into account the most relevant factual considerations of the case of the first petitioner and guided itself by wholly irrelevant considerations which had or have no factual basis whatsoever and passed the said order on 19th September, 2001, asking the first writ petitioner herein to apply for voluntary retirement under provisions of the said 34(2) of the service regulation. The said service Regulations 34(2), in my opinion, have no application to the facts and the circumstances of the case of the first petitioner in the first place.

70. Furthermore, the Board should not be permitted and cannot be allowed to take the fullest advantage of its own wrong, the writ petitioner applied for premature retirement way back in December 1997, on the ground of his permanent disablement, due to his said cerebral attack, while he was on duty. The writ petitioner was examined by the Medical Board constituted by the employer of the first petitioner herein, the State Electricity Board itself.

71. On or about 16th October, 1998, the Medical Board of the State Electricity Board itself declared the writ petitioner as totally unfit for over seven years. In spite of said declaration of the Medical Board, in October 1998, the application of the petitioner for premature retirement, made in December, 1997, to be precise on 22nd December, 1997, was kept pending even after the said declaration of the Medical Board that the petitioner was wholly unfit.

72. The said application was kept pending, even after the said medical report, for long two years. The writ petitioner for no reason of whatsoever nature was again directed to appear before another Medical Board on 2nd December, 2000.

73. Why the period of two years had elapsed, why the Board did not consider the application just after the report of the Medical Board on 16th October, 1998, have not been explained by the concerned respondents at all. Nothing has to be found in the affidavit-in-opposition on behalf of the concerned respondents either. Should the first writ petitioner herein suffer because of the utter inaction

on the part of the Board, a simple answer to that is that the first petitioner cannot be made to suffer for such inaction on the part of the Board. The said impugned order dated 19th September, 2001, in my opinion, has sought to make the first writ petitioner herein, an innocent victim.

74. On the receipt of the said application from the first writ petitioner herein, dated 22nd December, 1997, for premature retirement the controlling officer named in the said office order dated 26th February 1997, is under a primary legal obligation to form an enquiry committee consisting of at least three officials of the establishments where the applicant is employed. The said committee then has to make an enquiry to the genuineness of the claim and also the financial condition of the family of the employee concerned. The duties of the said controlling officer and the said enquiry committee, thereafter, are mentioned in the said office order dated 26th February, 1997. None knows as to whether such enquiry committee was at all formed as provided in the said office order, in the instant case, at all.

75. From the affidavit-in-opposition on behalf of the concerned respondent it does not appear that such committee was at all formed as was and is mandatory under the provisions of the said office order dated 26th February, 1997.

76. Thus, in my opinion, the concerned respondents were in fundamental breach of their duties in not forming the enquiry committee in terms of the said office order dated 26th February, 1997. In the absence of the said committee, in my opinion, the said application of the first writ petitioner herein for premature retirement, could not be properly processed and considered in terms of the said office order dated 26th February, 1997. The concerned respondents, therefore, are in breach of mandatory condition or procedure of the said office order dated 26th February, 1997.

77. The concerned respondents however passed the said impugned order dated 19th September, 2001, as they failed to appreciate and understand the true spirit behind the said office order dated 26th February, 1997. The said office order was issued because the earlier office order No. 5233 dated 16th March, 1995, was not adequate enough to cover the case or cases where an employee becomes permanently incapacitated on medical ground or other wise not covered by the said earlier order dated 16th March, 1995.

78. The whole object of issuing the said office order was to give relief to those employees who became permanently incapacitated because either on medical grounds or some other grounds while in service. The concerned respondents failed to see that because of permanent disablement of the first petitioner, his family needed immediate relief and contemplating such situations. The concerned authority namely, the West Bengal State Electricity Board, issued the said office order dated 26th February, 1997, to give reliefs to those employees who became and become victims or such situations, as mentioned in the first condition of the said order.

79. I have no hesitation in my mind that the authority concerned in passing the said order dated 19th September, 2001, have completely misinterpreted and/or misconstrued the most relevant provisions of the said office order and above all failed to appreciate the true spirit and the policy in passing the said order in the first place.

80. The said impugned order was passed wholly mechanically without application of mind and in utter disregard to the most relevant factual considerations of the case of the first writ petitioner herein. The authority concerned, in my view, passed the said order taking into account the most irrelevant considerations. Thus in passing the said order the authority concerned has acted in excess of its jurisdiction at the least.

81. I have no manner of doubt in my mind that in passing the said impugned order, rejecting the application of the first petitioner for premature retirement, on the ground of his permanent disablement, the concerned authority failed to appreciate the true spirit of the said order dated 26th February, 1997.

82. It is also provided in the said order that in special cases where relaxation of any or all the aforesaid conditions is considered imperative such cases would be referred by the Power Department to the Labour Department for examination. The Labour Department in that event will forward the case with their views to the Chief Minister for final decision.

83. So this condition empowers the concerned authority to even relax or wave any condition or all the conditions made in the said office order in a proper case. This condition itself shows that in making the scheme for premature retirement the authority concerned did not intend to be too technical or hiper-technical for the purpose of considering an application made under the provisions of the scheme, as contained in the said office order dated 26th February, 1997.

84. The facts of the case are clear enough and the first writ petitioner herein rightly made the application for premature retirement on the ground of his permanent disablement seeking employment of his dependant son under the provisions of the said office order dated 26th February, 2002.

85. In my considered opinion the concerned authority passed the said impugned order dated 19th September, 2001, without taking into account the most important factual considerations and without understanding the true spirit behind the said office order dated 26th February, 1997.

86. In passing the said impugned order the authority concerned has sought to take the fullest advantage of its own wrong. No reason has been assigned as to why the concerned authority took five years to consider the application of the first petitioner herein who was and is lying bed-ridden in an utter helpless condition and at the absolute mercy of the concerned respondents herein.

87. No explanation has been given, as I have said before, as to why the case of the writ petitioner was kept pending for two years even after the first Medical

Board declared the first writ petitioner herein as permanently invalid.

88. The concerned authority, in my opinion, passed the said order on 19th September, 2001, on total misappreciation of facts and in an utter misconceived notion of the provisions made in the said office order No. 5477 dated 26th February, 1997.

89. Under the facts and circumstances of the entire case, I think the concerned respondents cannot be allowed to take the fullest advantage of its own wrong. In passing the said order, on 19th September, 2001, the concerned authority, in fact, sought to take the fullest advantage of its own wrong of not considering the application of the first petitioner for premature retirement, on its merits, which was made way back in December, 1997.

90. Thus, the impugned order dated 19th September, 2001, being Memo No. C/IR/NT/887 is, hereby, set aside and quashed.

91. The concerned respondents, however, are directed to process the application of the first writ petitioner herein dated 26th December, 1997, on its merits in terms of the provisions contained in the said Office order No. 5477 dated 26th February, 1997, within a period of five weeks from the date of communication of the order.

92. Needless to mention that the first petitioner herein, Bimal Kumar Mishra, on his premature retirement, shall be entitled to all admissible or allowable pensionary benefits in terms of the said Office order dated 26th February, 1997, since he has been declared permanently disabled by the Medical Board constituted by the West Bengal State Electricity Board.

93. As far as the question of providing employment to the dependent son of the first petitioner is concerned the concerned authority is directed to process and consider the said application of the first writ petitioner herein on its own merits and in terms of the relevant provisions, in particular Clause V of the said Office order No. 5477 dated 26th February, 1997, within the said period of five weeks from the date of communication of this order.

94. Since the first writ petitioner herein has been lying bed-ridden since 1997, and since his application for premature retirement has been kept pending by the Board or its concerned officers for so long and since the writ petitioner has been in acute financial hardship, the concerned respondents are directed to release fifty percent of his admissible service and pensionary benefits to which the first writ petitioner is entitled, in terms of the provisions of the said Office order No. 5477 dated 26th February, 1997, in his favour, on an adhoc basis, within three weeks from the date of communication of this order.

95. The payments of the said fifty percent of pensionary and retirement benefits shall be adjusted against his final payment which shall be made after a period of five weeks from the date of communication of this order when the authority concerned disposes of the said application of the first writ petitioner for

premature retirement and providing employment of his dependent son, in terms of the order passed hereinabove.

96. The order passed and the directions given herein are to be treated by the concerned respondents as peremptory and mandatory.

97. Thus, the writ application is disposed of in terms of the above order.

98. There will be no order as to costs.

99. All parties are to act on a signed xerox copy of this Judgment upon the usual undertakings.

100. Let a xerox signed copy of the operative portion of the Judgment duly countersigned by the Assistant Registrar (Court) be handed over to the learned Advocates for the petitioners and the respondents upon the usual undertakings.