

(2003) 03 CAL CK 0048
In the Calcutta High Court
Case No : W.P.S.T. No. 208 of 2001

Dr. Sajal Kanti Chakraborty	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 CHN 354 : (2003) 1 ILR (Cal) 508

Hon'ble Judges : Altamas Kabir, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : Kashi Kanta Moitra, S.K. Haldar, T.K. Banerjee, for the Appellant;Chandra Sekhar Das, Atashi Gupta, for the Respondent

Judgement

Altamas Kabir, J.—The writ petitioner joined the post of Veterinary Assistant Surgeon in the office of the Director of Veterinary Services and Animal Husbandry, Government of West Bengal, on 18th April, 1958, and he continued to work in the said Directorate till he resigned from service on 8th April, 1985, while holding the post of District Veterinary Officer, West Dinajpur. According to the writ petitioner, his resignation was duly accepted by the Government with effect from 8th April, 1985, vide Order No. 2784-V/3M/1/85 dated 25th July, 1985, issued by the Deputy Secretary to the Government of West Bengal, and he was permitted to join the Gour Gramin Bank at Malda on 9th April, 1985, as Technical Officer (Animal Husbandry) and he ultimately retired from the service of the Bank on 31st January, 1997. He, thereafter, applied to the Directorate of Veterinary Services, Government of West Bengal, for his pensionary benefits under the provisions of Rule 59 of the West Bengal (Death-cum-Retirement Benefit) Rules, 1971, in view of the provisions of Rule 54 thereof.

2. Inasmuch as, the writ petitioner's pensionary benefits were not being released, he applied to the West Bengal Administrative Tribunal by way of O.A. No. 4241 of 1999, inter alia, for a direction upon the respondents therein to release his pensionary benefits forthwith.

3. The said application was taken up for consideration by the learned Tribunal and disposed of by an order dated 22nd June, 2000, with a direction upon the respondents to release provisional pension as per rules in the writ petitioner's favour within sixty days and to also issue final pension order expeditiously as admissible under the Rules preferably within six months from the date of issuance of the order for provisional pension.

4. According to the writ petitioner, without complying with the aforesaid directions of the learned Tribunal, the Director of Animal Husbandry and Veterinary Services, West Bengal, wrote back to the petitioner on 14th July, 2000, informing him that as observed by the Finance Department, he was entitled to get pro-rata pension and pro-rata gratuity in terms of Rule 189A of the Death-cum-Retirement Benefit Rules, 1971, as amended by Finance Department Notification No. 2567-G dated 30th March, 1976.

5. The petitioner thereupon filed an application for contempt, being C.C.P. No. 87 of 2000, which was dismissed by the learned Tribunal on 12 January, 2001, upon holding that since the respondents were directed to release pension as admissible and on enquiring the petitioner was found not to be entitled to the said benefit in terms of the prevailing rules, there was no ground to hold that the respondents had violated the order dated 22nd June, 2000.

6. The present writ application is directed against the said order of the learned Tribunal dated 12th January, 2001.

7. Appearing in support of the writ petition, Mr. Kashi Kanta Moitra submitted that under Rule 59 of the 1971 Rules the petitioner was entitled to retiring pension having rendered qualifying service of 27 years under the Directorate of Animal Husbandry and Veterinary Services, Government of West Bengal.

8. Mr. Moitra submitted that the petitioner had joined the service in the post of Veterinary Assistant Surgeon on 18th April, 1958 and had worked in the aforesaid Department till 8th April, 1985, when his resignation from service was accepted by the State Government to enable him to join the post of Technical Officer (Animal Husbandry) under the Gour Gramin Bank, Malda. Mr. Moitra referred to a letter dated 20th May, 1987, written by the Director of Veterinary Services, West Bengal, to the District Veterinary Officer, West Dinajpur, forwarding an extract of the notes and order dated 19th June, 1988, of the Finance Department that the writ petitioner's pension and gratuity for his 27 years' service rendered to the Directorate may not be released while he enjoyed special pay protection on his joining the post of Technical Officer (Animal Husbandry) under the Gour Gramin Bank, Malda, but that such benefits could be released once such pay protection was withdrawn as per Rule 59 of the 1971 Rules.

9. Mr. Moitra submitted that despite the repeated requests made by the Directorate of Veterinary Services and Animal Husbandry to release the writ petitioner's pensionary benefits under Rule 59 of the 1971 Rules, the concerned

authorities failed to take steps in that regard for which the petitioner had to move the Administrative Tribunal which, inter alia, directed the concerned respondents to release the petitioner's provisional pension within sixty days and to issue final pension order expeditiously, but preferably within six months from the date of issuance of the order for provisional pension.

10. Mr. Moitra submitted that after communication of the aforesaid order dated 22nd June, 2000, passed by the learned Tribunal, the Directorate of Veterinary Services and Animal Husbandry, informed the writ petitioner by his letter dated 14th July, 2000, that as observed by the Finance Department he was entitled to get pro-rata pension and gratuity in terms of Rule 189A of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 for the period of service rendered by him under the Directorate between 1st April, 1958 and 8th April, 1985.

11. Mr. Moitra submitted that the aforesaid stand taken by the Finance Department was contrary to the provisions of Rule 59 of the 1971 Rules and such decision appears to have been taken only taking into account the petitioner's service with the Gour Gramin Bank from 9th April, 1985 till 31st January, 1997. Mr. Moitra urged that the petitioner's claim for pensionary benefits was on account of his having rendered 27 years of service under the Directorate of Veterinary Services and Animal Husbandry under the Government of West Bengal and such benefit had been denied to him by applying the provisions of Rule 189A of the said Rules.

12. Mr. Moitra submitted that the learned Tribunal ought not to have dismissed the petitioner's application for contempt merely on the ground that from the order dated 20th November, 2000, it would be seen that since the petitioner had resigned on his own accord, he was not entitled to get pensionary benefits under the normal rules. Mr. Moitra submitted that the learned Tribunal had erred in holding that there was no ground to hold that the respondent concerned had violated the directions contained in the order of 22nd June, 2000, inasmuch as, on enquiry it had been found that the petitioner was not entitled to get pensionary benefits in terms of the prevailing Rules. Mr. Moitra submitted that the directions contained in the order of 22nd June, 2000, passed by the learned Tribunal were required to be complied with in their proper spirit and not merely by disposing of the petitioner's claim on the basis of Rules which do not apply to the petitioner's case.

13. Mr. Moitra submitted that although the petitioner had resigned from service on his own volition after completing the required number of years towards qualifying service for pensionary benefits, such resignation had been duly accepted by the State Government which brought the petitioner's case within the ambit of Rule 59 of the 1971 Rules and not Rule 189A as observed by the Finance Department. It was urged that the said position had been duly accepted by the concerned Directorate and several requests had been made for payment of the petitioner's pensionary benefits, but such benefits were sought to be

withheld only on the opinion of the Finance Department that the petitioner was entitled under Rule 189A of the 1971 Rules to pro-rata pension and pro-rata gratuity on account of his service rendered in the Gour Gramin Bank, Malda.

14. Mr. Moitra submitted that this was a fit case where the learned Tribunal should have passed appropriate orders on the petitioner's application for contempt instead of dismissing the same.

15. Opposing the writ application, Mr. Chandra Sekhar Das submitted that the same was misconceived and was not maintainable, inasmuch as, the order forming the subject-matter of the writ petition had been passed on an application for contempt of court. Mr. Das submitted that the learned Tribunal had very correctly observed that the directions with which the original application had been disposed of had been complied with by the respondents as the petitioner's case for pensionary benefits had been duly considered and it had been found that the provisions of Rule 59 of 1971 Rules did not apply to the petitioner and that he was entitled to pro-rata pension and gratuity in accordance with Rule 189A of the said Rules.

16. Mr. Das urged that this was not a case where the respondents had wilfully and/or deliberately violated or floated the orders and directions given by the learned Tribunal, but involved a question of interpretation of the provisions of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971.

17. On merits Mr. Das contended that it was not for the Department to decide as to which of the provisions of the 1971 Rules would apply to the writ petitioner. Mr. Das submitted that the Director of Animal Husbandry and Veterinary Services had taken up the matter with the Finance Department and had also requested that the petitioner's pensionary benefits be released in keeping with the provision of Rule 59 of the said Rules, but the Finance Department after examining the matter had come to a decision that the petitioner was not entitled to the benefits of Rule 59 but that his case would be governed under Rule 189A of the 1971 Rules.

18. In connection with his submissions Mr. Das referred to Rule 33 of the 1971 Rules which provides as follows:--

"Rule 33. Resignation and dismissal.--(1) Resignation from public service, or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination entails forfeiture of past service.

(2) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service:

Provided that a Government servant who resigns his appointment to take up another appointment under Government with higher initial pay as an outsider in terms of paragraph 4(b) of the Government of West Bengal. Finance Department G.O. No. 3556-F dated 7th July, 1964, shall not be entitled to the benefit of this

clause.

(3) In cases where an interruption in service is inevitable due to appointment being at different stations, such interruption not exceeding the joining time permissible under the rules on transfer shall be converted by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation under Rule 35(3) to the extent to which the period is not covered by leave due to the Government servant."

19. Mr. Das submitted that in the instant case since the petitioner had resigned from service on his own accord, his past service stood forfeited under Sub-rule (1) of Rule 33 and he was not, therefore, entitled to the benefit of Rule 59 and his case came within the ambit of Rule 189A as had been observed by the Finance Department.

20. Mr. Das submitted that the writ petition was liable to be dismissed on the aforesaid consideration as well.

21. Strictly speaking, Mr. Das's contention that the instant writ application was misconceived is persuasive, but considering the fact that the petitioner retired from service as far back as on 31st January, 1997, and his pensionary benefits are yet to be finalised, we decided to consider the matter on merits.

22. That the petitioner rendered 27 years of service between 18th April, 1958 to 8th April, 1985, in the Directorate of Veterinary Services and Animal Husbandry, Government of West Bengal, is not disputed. It is also not disputed that the resignation tendered by the petitioner from the service of the Directorate was duly accepted by the Government with effect from 8th April, 1985 vide order dated 25th July, 1985, issued by the Deputy Secretary to the Government of West Bengal, to enable the petitioner to join the Gour Gramin Bank at Malda on 9th April, 1985. It is in this background that one will have to consider whether having regard to Rule 33(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, the petitioner's service in the Directorate for 27 years would stand forfeited and whether the petitioner would be entitled only to pro-rata pension and gratuity under Rule 189A thereof.

23. Sub-rule(1) of Rule 33 of the aforesaid Rules, which has been extracted hereinabove, refers to resignation from public service which would entail forfeiture of past service. Rule 58 of the said Rules provides that retiring pension would be granted to an officer who is permitted to retire after completing qualifying service for 30 years or such less time as may be for any special class of officers be prescribed. Rule 59, inter alia, provides that members of the West Bengal Veterinary Services on their resignation being accepted would be entitled to retiring pension after completing qualifying service of not less than 25 years. While Rule 33(1) speaks of forfeiture of past service on resignation from public service, Rule 59 provides that on the resignation of a member of the West Bengal Veterinary Services being accepted he would be entitled to receive pension after completing qualifying service of not less than 25 years. Although the two

provisions appear to militate against each other, in our view, the same is not so and they are capable of harmonious construction.

24. While Rule 33(1) speaks of resignation by the member of the service, Rule 33(2) provides that resignation of an appointment to take up with proper permission another appointment would not be counted as resignation of public service. As far as the petitioner is concerned since he resigned to take up an appointment with the Gour Gramin Bank at Malda upon his resignation being accepted, the provisions of Rule 59 would be attracted to his case and he would become entitled to retiring pension having completed not less than 25 years of qualifying service. In other words, in view of Sub-rule (2) of Rule 33, the provisions of Sub-rule (1) of the said Rule would not apply to the petitioner's case and he would be entitled to the benefit of Rule 59 instead. In this regard reference may also be made to the memorandum dated 25th July, 1985, issued by the Department of Animal Husbandry and Veterinary Services which, inter alia, provides that the Government was pleased to accept the resignation tendered by the petitioner from the service under the Directorate of the Veterinary Services, West Bengal, with effect from 8th April, 1985, in order to enable him to join his new assignment as Technical Officer (Animal Husbandry) under the Gour Gramin Bank at Malda. In our view, the said memorandum fulfils the condition of Rule 33(2) so as to entitle the petitioner to the benefit of Rule 59 of the aforesaid Rules.

25. Consequently, we are of the view, that the decision taken by the Finance Department to the effect that the petitioner's case came within the ambit of Rule 189A is incorrect.

26. We, therefore, set aside the order passed by the learned Tribunal dated 12th January, 2001 as also the decision of the Finance Department, Government of West Bengal that the petitioner was entitled to pro-rata pension and gratuity in terms of Rule 189A of the aforesaid Rules and we direct the concerned respondents to provide to the petitioner the benefits of Rule 59 of the 1971 Rules within three months from the date of communication of this order.

27. The writ application is disposed of accordingly.

28. There will be no order as to costs.

29. If an urgent xerox certified copy of this judgment is applied for, the same is to be supplied to the applicant expeditiously, subject to compliance with all the required formalities.

Alok Kumar Basu, J.

30. I agree.