
(2018) 06 CAL CK 0144
In the Calcutta High Court
Case No : W.P.966 (W) of 2009

Prasanta Kumar Goswami

APPELLANT

Vs

North Bengal State Transport Corporation & Ors.

RESPONDENT

Date of Decision : 14-06-2018

Acts Referred:

Road Transport Act, 1959 — Section 3F

Citation : (2018) 06 CAL CK 0144

Hon'ble Judges : RAJASEKHAR MANTHA, J

Bench : Single Bench

Advocate : Indranil Chakraborti, Amal Kumar Sen, Lal Mohan Basu

Final Decision : Allowed

Judgement

Rajasekhar Mantha, J.

1. The writ petitioner is aggrieved by receipt of lesser amount of pension compared to similarly situated persons in the State Government as well as

the other Transport Corporations in the State of West Bengal, namely, SBSTC, CSTC etc.

2. The writ petitioner joined the service of the Government of West Bengal in the State Transport Department, Cooch Behar as a cashier on 27th June, 1959.

3. Thereafter, on an assurance contained in the Road Transport Corporation Act of 1959 at Section 3F, the petitioner's service was shifted mandatorily to the North Bengal State Transport Corporation (NBSTC).

4. The NBSTC until 1990 only had a Provident Fund Scheme. Upon a Pension scheme being introduced, in or about June, 1992, the writ petitioner opted for pension under the NBSTC Pension Regulations. The writ petitioner

retired from service on attaining superannuation on 31st July, 1994.

However, the amount of pension paid to him came to be less as benefits under 4th Pay Commission were not allowed to the employees of NBSTC

and a large number other State Government and State Transport Corporation, who retired prior to 1996. The said Pre-1996 retirees were however

allowed the 5th Pay Commission benefits and subsequent Pay Commissions.

5. With a view to address the anomaly and disparity between those employees who received benefits under the 4th Pay Commission and those who

did not, the State Government introduced a special measure vide Memorandum dated 27th October, 1998. Under the said Circular at Clause 4.1, the

State Government ordered consolidation of pension/family pension of the pre-1996 employees with certain additional amounts. Clause 4.1 of the said

memorandum is set out hereinbelow:-

4.1 The pension/family pension of existing pre-1996 pensioners/family pensioners will be consolidated w.e.f. 1.4.97 by adding together :

(i) Existing pension/Family Pension;

(ii) Existing relief on pension/Family Pension,

(iii) First Interim Relief sanctioned under Memo No.1474-F(Pen) dt.16.1.95.

(iv) Second Interim Relief sanctioned under Memo No.530 F(Pen) dt 1.4.97.

(v) An amount equivalent to 40% of the existing pension/family pension.

6. Since the writ petitioner and 369 other employees of NBSTC were not receiving the benefit of the aforesaid Circular dated 27th October, 1998 and

their pension continued to remain at a much lower scale, two Writ petitions were filed before this Honâble Court. The said Writ Petitions were

numbered as W.P.s 7346 (w) and 7347 (w) of 2003. By an order dated 7th March, 2008 passed by a Co-ordinate Bench of this Court, the said Writ

Petitions were disposed of, directing the NBSTC to conduct an enquiry to ascertain the reasons for such anomaly or discrepancy in pension payable to

the said pre 1996 employees, as opposed to that being received by other similarly situated State Government employees and employees of other

Transport Corporations.

7. Pursuant to such order, an enquiry was conducted by the Chairman and Managing Director of the employer, NBSTC and it was found that the said

1998 Circular should have been applied to the said pre 1996 retirees like the writ

petitioner. It is not disputed that such consolidation has also been done as per the said 1998 Circular and or similar measures to employees of other State Transport Corporations, namely, SBSTC and CSTC.

8. Accordingly, by several letters, inter alia, dated 8th November, 2005, 8th February, 2006, 28th March, 2006, 23rd April, 2007 and 16th June, 2008, the Managing Director of the Corporation found inter alia the writ petitioner and about 369 other pre 1996 retirees were entitled to the benefit of either the 4th Pay Commission and/or the aforesaid Circular dated 27th October, 1998. After recalculating the actual pensionary benefits payable to such persons the said NBSTC prayed for release of funds from the State Government. The State Government has however not released any funds to the employer, NBSTC, due to paucity of funds.

9. I had occasion to deal with and deliver judgment in respect of certain other employees also pre 1996 retirees of the NBSTC. The said judgment was delivered on 8th February, 2018 in WP No. 12661 (W) of 2016. In the said judgment I held that the said pre 1996 retirees were entitled to consolidation of pension in terms of the aforesaid Circular of October, 1998.

10. Shri Amal Sen, learned Additional Government Pleader appearing for the State Government opposed the writ petition vehemently. Shri Chakraborty appearing for the writ petitioner gave detailed replies and reiterated all his submissions made in support of the writ petition. The objections of the State Government are dealt with as under.

11. The State first relied upon the decision of the Honâ??ble Supreme Court in PEPSU RTC Vs. S.K. Sharma and Ors. reported in (2016) 9 SCC

206. In the said decision the Honâ??ble Supreme Court held that since after merger of the former State of PEPSU in the Indian Union and after inclusion of the territory in the State of Punjab, the employees of the said PEPSU roadways that were subsequently absorbed in the PEPSU Road Transport Corporation could not claim pension that was permitted only to the employees of the Government of Punjab. Mr. Sen, therefore, submitted that the writ petitioner being an employee of the NBSTC cannot claim parity with the State Government employee.

12. I find that the judgment of the Honâ??ble Supreme Court is distinguishable on facts. In the first place, the writ petitioner herein sat in a written test and was absorbed in the permanent employment of the State of West Bengal

directly. He was posted as a cashier in the Transport Department of the State of Cooch Behar in the year 1959. The Kingdom of Cooch Behar had earlier merged into the Indian Union and thereafter made part of the State of West Bengal in the year 1949.

13. The writ petitioner was, therefore, first an employee of the State Government directly. He was compulsorily shifted to the NBSTC on the basis of

an assurance, a safety valve and a precondition laid down in the aforesaid Section 3F of the Road Transport Act, 1959 amended immediately prior to

establishment of the NBSTC. The writ petitioner did not have any option but to join the NBSTC. The said Section 3F, is set out hereinbelow.

“(F) persons employed by the State Government in connection with the State Undertaking and continuing in office immediately before the

establishment of the corporation on such terms and conditions, not less advantageous than what they were entitled to immediately before such

establishment, as may be determined by the Corporation.”

14. The State Government is, thus, estopped from contending that the writ petitioner cannot claim parity with a State Government employee after

retiring from the NBSTC. The writ petitioner having altered his position by reason of the aforesaid Section 3F. The State Government is estopped

from denying him the same benefit available to the State Government employees.

15. Mr. Sen next relied upon the decision of the Hon^{ble} Supreme Court in the case of Himachal vs. Rajesh Chandra Sur reported in (2016) 10

SCC 77. At paragraph 19 the said judgment, the Hon^{ble} Supreme Court held that a scheme for pension for Transport Corporation employees

after having been withdrawn by the State Government cannot be claimed by the employees of the Corporation on the ground of pension being

available to the State Government employees. The said decision is distinguishable on facts and has no manner of application in the instant case.

16. In reply to the argument that similarly situated persons in other Transport Corporations, namely, SBSTC and CSTC were receiving pension at par

with the State Government employees and after the benefit under the 4th Pay Commission and/or the aforesaid Circular dated 27th October, 1998,

Mr. Sen argued that the terms and conditions of service of the other Transport Corporations may be similar but are not same. I am not inclined to see

the employees of NBSTC any differently from the similarly situated employees in

the SBSTC and CSTC. In any event, the writ petitioner was initially an employee of the State Government itself and, therefore, he may be much better placed than the other writ petitioners in WP No. 12661 (W) of

2016. Even otherwise the NBSTC, SBSTC and CSTC are all wholly owned and controlled by the State Government.

17. Mr. Sen next argued that the said Circular dated 27th October, 1998 has no application to Corporations in the State having their own rules for

pension. The NBSTC having its own pension and regulations, the writ petitioner, therefore, cannot claim the benefit of the aforesaid Circular.

18. Admittedly, the management of NBSTC has pursuant to the order dated 7th March, 2008 passed in WP No. 7346(W) and 7347(W) of 2003,

conducted an enquiry and found the Circular dated 27th October, 1998 applicable to inter alia the writ petitioner. The State Government has not

disputed the finding till date. There is no evidence produced by the State rejecting such findings. On the contrary, funds have been denied by the State

Government to the NBSTC only on the ground of paucity. If the said Circular dated 27th October, 1998 has not been applied to the pre 1996 retirees

of SBSTC and CSTC, the 4th Pay Commission benefit must have been definitely allowed to them, as the said employees are receiving the same

amount of pension as those similarly situated pensioners under the State Government. Hence the contention of Mr. Sen cannot be accepted.

19. The object and purpose behind the aforesaid Circular dated 27th October, 1998 can easily be deduced. The said pre 1996 retirees both at the State

Government, NBSTC and other Corporations within the State were not getting the benefit of the 4th Pay Commission. Each of them, however, has

received the benefit under the 5th Pay Commission. It was indeed a paradox and unacceptable even for the State Government that after having

conferred the benefit of the 5th Pay Commission, benefit under the 4th Pay Commission was not being allowed to the pre 1996 retirees in the State.

The said Circular dated 27th October, 1998 was introduced with a view to address the aforesaid anomaly. The argument of the State, therefore,

cannot be otherwise accepted.

20. Mr. Sen next argued that the writ petitioner's claims if allowed would amount to granting him a double benefit contrary to law. He submits that

the writ petitioner's pension was calculated after merging his DA with his basic

pay at the time of retirement. If the said Circular is applied, Mr.

Sen submits, that the same would be a double merger and consequently a double benefit to the writ petitioner and other pre 1996 retirees in the

NBSTC. The argument to say the least is devoid of substance. The State Government did not have any issue re-fitting pension after applying Clause

4.1 of the aforesaid Circular dated 27th October, 1998 to its own employees. The said Clause consolidating pension has also been applied to

employees of SBSTC and CSTC along with similarly situated persons in the State Government.

21. There is therefore absolutely no reason why the writ petitioner and other pre 1996 retirees of the NBSTC should not be allowed such

consolidation.

22. For the reasons stated herein above, the writ petition must succeed. WP No. 966 (W) of 2009 is, therefore, allowed.

23. The NBSTC and the Transport Secretary for the State of West Bengal are hereby directed to, within a period of a month from date, consolidate

the basic pension payable to the writ petitioner in terms of Clause 4.1 of the Circular dated 27th October, 1998. Upon being informed of the same the

Finance Secretary of the State shall release the arrears and also start enhanced pension in favour of the writ petitioner forthwith.

24. There will be no order as to costs.

25. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties at an early date.