

(2015) 02 CAL CK 0077
In the Calcutta High Court
Case No : Writ Petition S.T. 275 of 2014

State of West Bengal and Others

APPELLANT

Vs

Dwijabandhu Sarkar

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Citation : (2015) 1 CALLT 433 : (2015) 2 CHN 15

Hon'ble Judges : Sudip Ahluwalia, J.; Pranab Kumar Chattopadhyay, J.

Bench : Division Bench

Advocate : Pranab Kumar Dutta and Debjit Mukherjee, for the Appellant; Saidur Rahaman, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The State of West Bengal and the authorities of the Department of Health and Family Welfare, Government of West Bengal have filed this writ petition assailing the judgment and order dated 8th October, 2013 passed by the West Bengal Administrative Tribunal in O.A. 562 of 2013 whereby the said learned Tribunal allowed the original application filed by the respondent-doctor herein by directing the Principal Secretary to accept the voluntary retirement of the said respondent-doctor if there is no bar under the statutory provisions. Mr. Pranab Kumar Dutta, learned Senior Advocate representing the authorities concerned namely, the petitioners herein submits that the authorities are entitled to refuse the prayer for voluntary retirement of an employee in public interest specially in terms of Note 3 to sub-rule (aaa) of Rule 75 of the West Bengal Service Rules, Part-I. Mr. Dutta further submits that the learned Tribunal while considering the aforesaid prayer of the employee concerned namely, the respondent herein, did not take note of the aforesaid provisions of the West Bengal Service Rules in an appropriate manner. Mr. Dutta also submits that the learned Tribunal should not have decided the matter on the very first day without granting any opportunity to the State respondents to file affidavits in the matter.

2. Mr. Dutta relies on a decision of the Hon'ble Supreme Court in the case of

People's University Vs. State of Madhya Pradesh and Another, . Mr. Dutta specifically refers to Head Note "C" of the said decision and submits that by not allowing time to the State Advocate to seek instructions and file a response prior to deciding the matter violates natural justice.

3. Going through the impugned judgment and order passed by the learned Tribunal, we find that the said learned Tribunal granted opportunity of hearing to the learned Advocate representing the State respondents and specifically recorded in the impugned order as hereunder:

" We, therefore, after hearing both the sides and on examination of the ground of rejection held categorically that the ground of rejection cannot be sustained within the statutory provision, and hence, we reject the same....." 4. The aforesaid decision, in our opinion, therefore, has no manner of application in the facts of the present case specially when the learned State Advocate did not pray before the learned Tribunal for allowing time to seek instructions and admittedly made necessary submissions.

5. Let us now consider whether the authorities concerned are really entitled to refuse voluntary retirement of an employee in terms of the aforesaid provisions of the West Bengal Service Rules, Part-I.

6. Rule 75(aaa) of the West Bengal Service Rules, Part-I as well as Note 3 appended below the aforesaid sub-rule are set out hereunder:

" Rule 75. *** ** *

(aaa) Any Government employee may, by giving notice of not less than 3 months in writing to the appointing authority, retire from Government service after he has attained the age of 50 years, if he is in Group A or Group B (erstwhile gazetted) service or post, and had entered Government service before attaining the age of 35 years; and in all other cases, after he has attained the age of 55 years, provided that it shall be open to the appointing authority to withhold permission to a Government employee under suspension who seeks to retire under this subrule.

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Note 3. - The appointing authority should invariably keep on record that in his opinion it is necessary to retire the Government employee in pursuance of aforesaid rule in public interest."

7. In terms of the aforesaid provisions, it is undisputedly, open to the appointing authority to withhold permission to a government employee under suspension who seeks to retire under the aforesaid sub-rule.

8. In the present case, the respondent-employee concerned is not under suspension. Note 3 appended to the aforesaid sub-rule, however, casts obligation on the appointing authority to keep on record that it is necessary to retire the government employee in public interest which is also not applicable in the instant

case.

9. The appointing authority is, however, not authorised and/or entitled to withhold permission to a government employee to retire in public interest in terms of Note 3. The said Note 3 only empowers the appointing authority to keep on record its opinion that it is necessary to retire the government employee in public interest and not withholding permission to a government employee who voluntarily wants to retire before attaining the age of superannuation. The appointing authority can only withhold permission to a government employee to retire under the aforesaid sub-rule when the said government employee is under suspension.

10. Mr. Dutta, learned Senior Advocate representing the authorities concerned namely, the petitioners herein relies on an unreported decision of this court in the case of *The State of West Bengal and Ors. v. Dr. Tonmoy Mondal* (W.P.S.T. 208 of 2014) wherein the aforesaid issue was neither discussed in the manner we have examined nor it has been held that under Note 3 to the sub-rule (aaa) of Rule 75 of the West Bengal Service Rules, Part-I, Government is entitled to withhold permission to a government employee to retire. Therefore, the aforesaid decision is also not at all applicable in the facts of the present case.

11. In the present case, the authorities concerned namely, the petitioners herein are not entitled to refuse permission or withhold permission to the respondent-employee to retire in terms of the aforesaid Rule 75(aaa) or even under Note 3 to the said sub-rule.

12. For the aforementioned reasons, we are not inclined to interfere with the impugned order passed by the learned Tribunal and dismiss this writ petition as we do not find any merit in the same.

13. The authorities concerned namely, the petitioners herein are directed to implement the directions passed by the learned Tribunal without any further delay and positively on or before 24th February, 2015. There will be no order as to costs.

Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocate of the parties on usual undertaking.