

(2018) 06 CAL CK 0094
In the Calcutta High Court
Case No : W.P.S.T. No.102 of 2017

State Of West Bengal & Ors.

APPELLANT

Vs

Ram Chandra Pal

RESPONDENT

Date of Decision : 04-06-2018

Acts Referred:

Constitution Of India, 1950 — Article 310, 311

Citation : (2018) 06 CAL CK 0094

Hon'ble Judges : DEBASISH KAR GUPTA, J; SHAMPA SARKAR, J

Bench : Division Bench

Advocate : Joytosh Majumder, Susanta Paul, Suvro Prakash Lahiri, Partha Sarathi Bhattacharyya, K. S. Alam, Raju Bhattacharyya

Judgement

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This application is directed against the judgment and order dated March 1, 2016 passed by the State Administrative Tribunal in O. A. No.328 of 2014.

By the said order, the Tribunal was pleased to pass the following directions:

â??There is nothing in Rule in support of the claim of the applicant. There is no verdict of Court to that effect also. Therefore, we are unable to

accede to the contention of Mr. Alam, Ld. Advocate for the applicant that past service of the applicant be counted for the purpose of enabling him to

get the pension and pensionary benefits. However, having regard to the factual matrix of the present case, we are of the opinion that for the sake of

equity and fair play, the appointment of the applicant should be given notional effect from 21.2.2004 when his counterpart was given appointment in

regular service. As already mentioned earlier, we are aware that such benefit of notional appointment from an earlier date will not entitle him to

pension as he will still fall short of the requisite qualifying service needed for

being eligible for pension. But, this may be beneficial for the applicant in so far as his entitlement to gratuity etc. is considered and which he, in our view, most certainly deserves in the light of the facts of the instance case.

Accordingly, we direct that although the prayer of applicant that he be allowed the benefit of counting the past service rendered by him as Tahsil

Mohurrier for the period from 1976 to 1984 in order to enable him to earn pension and other retiral benefits cannot be accepted, his appointment

should be given notional effect from 21.2.2004 when his counterpart was given appointment in regular service, and that all consequential benefits be

released in his favour within a period of eight weeks from the date of communication of this order.â??

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Being aggrieved by the above directions of the learned Tribunal, the instant writ application has been filed by the State of West Bengal. The main

contention of the petitioners/respondents is that the respondent (the applicant therein) was appointed under a Scheme framed by the Government of

West Bengal for absorption of Tehasil Mohur-rir pursuant to the order of the Honâ??ble High Court. The respondent (the applicant therein) along

with 23 others filed an application before the learned Tribunal, being O.A. No.952 of 2000 for their absorption in GroupD staff. However, the

respondent herein was not absorbed. The respondent thereafter filed another application before the learned Tribunal and in terms of the order of the

learned Tribunal dated July 29, 2008, he was absorbed in the Government Service as GroupD Employee (Night Guard/Office Peon) in the office of

Block Land & Land Reforms Officer, GoghatI. The respondent joined his post on April 7, 2009.

It is the case of the petitioners herein that at the time of absorption, the respondent did not raise any objection as to his date of appointment on and

from April 7, 2009. He finally worked in the said post and retired from his service on July 30, 2010 after attaining the age of superannuation. He

received a sum of Rs.12,954/ as gratuity without raising any objection with regard to the same. Thereafter, the respondent after four years from

having retired from the service and having accepted his gratuity and all retirement benefits as full and final settlement, filed the original application

being O.A. No.328 of 2014 before the learned Tribunal. In the said original

application, the respondent (the applicant therein) prayed for the following relief:

“An interim order directing the respondent to count the passed service from 1976 to 1984 and from 21.12.2004 to 30.6.2010 as a service tenure, so that the petitioner can avail the opportunity of pension till disposal of this application.”

After having heard the learned Counsel appearing for the respective parties, the learned Tribunal held that the respondent (the applicant therein) was

not entitled to any pensionary benefits, even if his past service was counted with effect from February 21, 2004, i.e. when some of the similarly

situated candidates have been given appointment. The Tribunal was pleased to turn down the prayer of the respondent herein for counting his past

service period from 1976 to 1984, as was prayed by him in the original application. However, the Tribunal was of the opinion that for the sake of

equity and fair play, the respondent herein be given appointment on notional basis with effect from February 21, 2004, when his counterparts were

given appointment in regular service. The Tribunal was further pleased to observe that such benefits would be beneficial to the respondent (the

applicant therein) to the extent that he may get some enhanced gratuity.

Accordingly, the Tribunal directed the petitioners (the respondents therein) to give appointment to the applicant therein with effect from February 21,

2004 on notional basis and thereafter, give him all the consequential benefits within a period of eight weeks from the date of communication of the said

order. Having gone through the facts and circumstances of the case and having considered the reasoning given by the Tribunal, we are of the

considered opinion that the Tribunal travelled beyond the scope and ambit of the original application and made out a third case thereby giving notional

appointment retrospectively to the applicant therein, although the same is not provided in the Scheme.

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It has been held by the Hon^{ble} Apex Court in a number of decisions that Government service is a status and the same is guided by the rules and

regulations. The Court cannot go beyond such rules and regulations and direct the employer to give notional benefits and/or to give all the

consequential benefits to any employee unless the same is provided in the rules

and regulations. Reliance may be placed to the decision in the case of

Roshan Lal Tandon " Vs The Union of India, reported in AIR 1967 S.C. 1889 and the relevant portion of the said judgment is quoted below:

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"(6) We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to

the petitioner at the time he entered Grade D and the condition of service could not be altered to his disadvantage afterwards by the

notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure B, laid down that

promotion to Grade C from Grade D was to be based on senioritycum suitability and this condition of service was contractual and

could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of

Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant

acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be

framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract.

The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the

parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally

altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of

removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is

not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of

status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and

in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which

powers and duties are exclusively determined by law and not by agreement

between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

“So we may find both contractual and status obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.”

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The Tribunal lost sight of the fact that when the respondent filed the original application before it, although he made a prayer therein to the effect that his counterparts had already been given appointment prior to him, there was no prayer therein for allowing him notional appointment on and from February 21, 2004. Thereafter, when the respondent herein was given appointment in 2004, he did not raise objection with regard to the date of his appointment. He served in the said capacity of Group D staff under the Block Land & Land Reforms Officer, Goghat I without raising any claim as to his notional appointment and for counting his past service. He retired from his service in 2010 after having accepted all the retirement benefits available in his case, without any protest. Thereafter, the respondent herein was neither entitled to turn around and make a claim for counting of his past service, nor was he entitled to the same after cessation of the employer/employee relationship.

The Tribunal erred in holding that equity and fair play entitled the respondent for appointment on notional basis with effect from February 21, 2004 by

not taking into consideration the fact that after four years from the date of cessation of the employer/employee relationship, the respondent did not have any right to move the original application at all. In such circumstances, the order impugned to the writ application cannot be sustained in law and the same is set aside. The original application is dismissed and the writ application accordingly stands allowed. There will, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be given to the parties at an early date.