

**IN THE HIGH COURT AT CALCUTTA**  
**CONSTITUTIONAL WRIT JURISDICTION**

(Original Side)

**Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ**

**W.P.O 684 of 2012**

**Reserved on : 14.03.2024**

**Pronounced on: 21.05.2024**

**Paresh Nath Mukherjee**

**...Petitioner**

**-Vs-**

**The West Bengal State Warehousing Corporation & Ors.**

**...Respondents**

**Present:-**

**Mr. Dwaipayan Basu Mallick,  
Mr. Sayantan Kar**

**... for the Petitioner**

**Mr. Kamalesh Bhattacharya,  
Mr. Aninda Bhattacharya**

**...for the Respondents.**

**Rajarshi Bharadwaj, J:**

1. The present writ is directed against the non-action of West Bengal State Warehousing Corporation herein respondent corporation in sanctioning the retiral benefits and dues to one Paresh Nath Mukherjee herein the writ petitioner.

2. The facts of the case in a nutshell is that the writ petitioner, an employee of respondent corporation since 1980 was arrested on 21.10.2004 in an independent matter not relating to his employment; Lake P.S Case No. 294 initiated under Section 324/302/34 of Indian Penal Code and subsequently

sentenced to rigorous imprisonment for ten years with a fine of Rs 2000/- under Section 304(1) of Indian Penal Code vide order dated 16.08.2007. During the pendency of order, the petitioner was under suspension with effect from 25.11.2004 under Rule 7(1)(3) read with Rule 7(4) of the West Bengal Services (Classification Control and Appeal) Rule 1971 (hereinafter referred to as Rules 1971) by order dated 10.12.2004.

**3.** The petitioner on being released on bail by order dated 04.12.2007 thereafter submitted a representation on 10.12.2007 to respondent corporation for recalling of order of suspension. Instead, the petitioner was served with a notice vide Memorandum No. O (1) STF-611/2010-2011/1672/SWC dated 05.02.2011 to show cause as to why he will not be dismissed from service of the Corporation as per Rule 11 of Rules 1971.

**4.** The petitioner challenged the continuation of suspension order and show cause notice and by order dated 25.08.2011, the Learned Single Judge was pleased to pass :-

*“In view of the discussions and observations made hereinabove, the order of suspension dated December 10,2004 as also the show cause notice dated January 19, 2011 are quashed and set aside. The respondent authority is directed to allow the petitioner to resume his duties forthwith without prejudice to his claim for consequential benefits, if any, which may arise after the disposal of the criminal appeal.”*

**5.** The petitioner was reinstated as Senior Assistant at Taratala-II Warehouse by the respondent corporation vide order L(II)-227/2011/752/SWC dated 07.09.2011 in pursuance of solemn order dated 25.08.2011. The petitioner served the respondent corporation until retirement on 31.10.2011 after reaching the age of superannuation on 14. 10.2011.

**6.** The petitioner by letters dated 15.09.2011,13.11.2011 and 16.01.2012 called upon the respondent corporation to release his retiral dues. Aggrieved by the passiveness of the respondent corporation in releasing retirement benefits and dues, the instant writ application was filed.

7. It has been submitted by the learned counsel for the petitioner that the respondent corporation has acted illegally and irrationally by not allowing the release of legitimate retiral dues despite a lapse of more than ten months from retirement. The criminal proceedings pending against the petitioner has no connection with his service because the conviction of the petitioner neither caused loss to respondent corporation during his service including service rendered on re employment nor occasioned the initiation of any departmental proceedings against him.

8. It is further the right of the petitioner to pensionary benefits after superannuation has been withheld by the respondent corporation without reasonable justification. The petitioner was paid a sum of Rs. 8,63,973/- (Rupees Eight Lakh Sixty-Three Thousand, Nine Hundred and Seventy-Three Only) as partial payments towards retiral dues on account of Gross Pay, Compulsory Provident Fund and Gratuity. However, a sum of Rs. 2,63,960/- (Rupees Two Lakh Sixty-Three Thousand and Nine Sixty Only) and Rs. 13,94,869/- (Rupees Thirteen Lakh Ninety-Four Thousand and Eight Sixty-Nine Only) remain due on account of Gratuity and other retiral benefits under the heads of difference of pay as per ROPA Rules 2009 and suspension allowance.

9. It has been argued by the learned counsel of the respondent corporation that dismissal of petitioner from service on conviction is the lawful consequence as per the special procedure followed under Section 11 of Rules 1971 which states that in case a person is convicted on a criminal charge, such person is liable to be dismissed, removed or reduced in rank on the ground of conduct which leads to his conviction on criminal charge. The petitioner suspended from 25.11.2004 to 06.09.2011 according to Rule 7(1) (c) of the Rules 1971 is not entitled to payment during period of suspension and revision of pay as per ROPA Rules 2009 on rejoining service because the solemn order dated 04.12.2007 merely suspended the order of punishment

while the order of conviction is still in operation. The petitioner had filed an appeal against such order of conviction which is pending since 2007.

**10.** Further, on superannuation, provident fund is admissible to the regular employees which has been already disbursed in favour of the petitioner and there is no pensionary benefits for employees of the respondent corporation. The period of suspension of the petitioner cannot be treated as period of service and therefore no provident fund was credited in his favour.

**11.** Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the writ petitioner is entitled to terminal benefit of Rs 16,58,829/- (Rupees Sixteen Lakh Fifty-Eight Thousand and Eight Hundred and Fifty) arising out of his employment payable to him by the respondent corporation.

**12.** In the instant case, the respondent corporation has failed to demonstrate any co-relation between the criminal proceedings against the petitioner and the duties required to be discharged by him in course of service. The quashing of the purported show cause notice and resumption of duty of the petitioner is treated to be an acceptance of dispensation of order of suspension dated 10.12.2004 by the respondent corporation thereby conferring upon the petitioner the right to claim pensionary benefits including Provident Fund, Gratuity, Leave Salary.

**13.** In the case of **Anandi Prasad Mahato -versus- State of West Bengal** reported in **2014(2) CHN (CAL) 103** the Hon'ble Calcutta High Court is of the view that where a person has been convicted in a criminal proceeding and such criminal proceedings has no nexus with the service of the petitioner coupled with the fact that there is no allegation during the service of the petitioner and no disciplinary proceedings having been initiated during the tenure of such employee, withholding of terminal benefits is without authority. In the case of **Gunamay Mahato -vs- The State of West Bengal & Ors.** reported in **2015 SCC Online Cal 7503**, the Hon'ble Calcutta High Court allowed disbursement of terminal benefits to the petitioner on the ground that

the criminal proceedings in which he had been convicted had no nexus with his service, no disciplinary proceedings had been initiated during his entire service tenure and that there was no allegation of pecuniary loss caused to the respondent in course of the employment of the petitioner.

**14.** In addition, in **Subhash Mahato-versus-State of West Bengal** reported in **2023 (2) CHN** it has been opined that a retiral benefit of an employee is the property of the employee, to receive the same is not only a legal but also a constitutional right. The right to receive retiral benefit by an employee is a vested right which cannot be taken away without due process of law.

**15.** In the present case, since criminal proceedings have not been instituted by the respondent corporation and the subsequent the conviction of the writ petitioner on criminal charges were not related to his employment, Rule 7 of the Rules 1971 is not applicable. The petitioner is entitled to remuneration for services rendered, including suspension allowance for the period between 25.11.2004 to 06.09.2011 as well as difference of pay as per ROPA Rules 2009. It is well settled that the right to pension cannot be taken away by administrative instruction. Pension and gratuity are not mere bounties, or given out of generosity by the employer, an employee earns these benefits by virtue of his long, continuous, faithful and un-blemished service. Pension is not an ex-gratia payment but it is a payment for the past service rendered. It is a part and parcel of the conditions of service.

**16.** For the reasons discussed above, the writ application being W.P.O No 694 of 2012 is allowed. The respondent corporation is directed to take appropriate steps in releasing remaining retirement benefits in lieu of employment of the petitioner within a period of three (03) months from the date of communication of this order.

**17.** With the above observations and directions, the writ application is disposed of. There shall, however, be no order as to costs.

18. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

**(RAJARSHI BHARADWAJ, J)**

**Kolkata**

21.05.2024

PA (BS)