

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

Reserved on: 04/02/2021
Pronounced on: 26/02/2021

WPST 20 of 2020

Kulesh Chandra Mondal

...Petitioner

Through:-
Mr. B. Nandy, Advocate
...present through VC
Mr. Rajesh Kumar Shah, Advocate
...present in Court

-Vs-

The State of West Bengal & Ors.

...Respondent

Through:-
Mr. Joytosh Majumdar, Mr. Raja Saha, and
Mrs. Kakali Samajpati,
... Advocate, present in Court

Coram: THE HON'BLE JUSTICE RAJESH BINDAL
THE HON'BLE JUSTICE ANIRUDDHA ROY

ORDER

Rajesh Bindal, J.

1. Order dated July 30, 2019 passed in CCP No.107 of 2017 by the West Bengal Administrative Tribunal (for short 'the Tribunal') is under challenge in the present petition.
2. The Contempt petition was filed before the Tribunal alleging non-compliance of the order dated June 8, 2017 passed in O.A. No.209 of 2017. In terms of the aforesaid order the Original Application filed by the petitioner was disposed of with a direction to the Director of Youth Service, Government of West Bengal to take decision on the representation of the petitioner in the light of the Rule 12 of West Bengal (Death-cum-Retirement Benefits) Rules, 1971 (for short 'the 1971 Rules').

3. Learned Counsel for the petitioner submitted that the Tribunal has committed error of jurisdiction while not entertaining the contempt petition bearing CCP No. 209 of 2017 filed by the petitioner as the order dated June 08, 2017 passed by the Tribunal had not been complied with. In terms of the aforesaid order direction was issued to the Director of Youth Service, Government of West Bengal to decide the claim of the petitioner for release of benefits in terms of the Rule 12 of the 1971 Rules. However, the Director had referred the matter to the learned Legal Remembrancer for guidance. The same was not in terms of the direction issued by the Tribunal. The Contempt Petition has been wrongly dismissed opining that the order stood complied with. It was a case of hardship. The provisions of Rule 12 of the 1971 Rules have not been properly appreciated. The petitioner has a family to support. Hence, he deserves to be granted pension.

4. On the other hand, learned Counsel for the respondents submitted that it is a case in which the petitioner was convicted for commission of offence under section 302/34 IPC vide judgment of the trial Court dated March 29, 2004. He was sentenced to suffer life imprisonment. The matter went upto Hon'ble the Supreme Court Vide order dated September 07, 2007 passed in Criminal Appeal No.1172 of 2007 the conviction of the petitioner was converted to section 304 Part-I of IPC and his sentence was reduced from life imprisonment to 10 years of imprisonment. He remained in Correctional Home for a period of ten years. After suffering the sentence he prayed for grant of compensatory allowance under Rule 12 of the 1971 Rules.

5. Referring to the judgment of the Hon'ble Supreme Court in ***J.Parihar Vs. Ganpat Duggar and Ors.*** reported as ***(1996) 6 SCC 291***, it was argued that the merits of the order cannot be gone into by the Contempt Court once compliance report has been filed. In the case in hand, the petitioner cannot claim any

compassionate allowance when he has been convicted for murder. The writ petition deserves to be dismissed.

6. Heard learned counsels for the parties and perused the paper book.

7. Challenge in the present writ petition is to the order passed by the Tribunal whereby the Contempt Petition filed by him alleging non-compliance of the order dated June 8, 2017 in O.A. No. 209 of 2017 was dismissed with the observation that the order stood complied with. This Court at present is not going into the issue regarding maintainability of the writ petition against order of dismissal of the contempt petition.

8. The basic fact which is in dispute is that the petitioner was convicted under Section 302 of IPC by the trial Court vide judgment dated March 29, 2004. He challenged the same by filing appeal and finally the Hon'ble Supreme Court in Criminal Appeal No.1172 of 2007 sentenced the petitioner under Section 304 Part-I instead of Section 302 of IPC. His sentence was reduced from life imprisonment to 10 years imprisonment. It is the admitted fact that after suffering the sentence the petitioner was released from Correctional Home on September 20, 2012. He was dismissed from service vide order dated April 12, 2013, with effect from March 29, 2004, the date of his conviction. The order of dismissal dated April 12, 2013 was challenged by the petitioner by filing O.A. No.242 of 2015. Amendment was carried out in the Original Application whereby challenge to the order of dismissal was withdrawn and only relief sought to be claimed was that compassionate allowance be paid to the petitioner under the Rule 12 of the 1971 Rules. Such a prayer having not been made before the competent authority. The Original Application was disposed of vide order dated June 29, 2016 as premature giving liberty to the petitioner to move such a representation, if so advised. As is evident from the record, a representation dated October 05, 2016 was made by the petitioner to the Director of Youth Service,

Government of West Bengal for release of compensatory allowance. Alleging that the same had not been disposed of, O.A. No. 209 of 2017 was filed before the Tribunal. The same was disposed of on June 08, 2017 with a direction to the Director of Youth Service, Government of West Bengal to take decision on the representation filed by the petitioner. In compliance of the aforesaid order a communication dated September 06, 2018 was sent to the petitioner along with an order passed by the Director on September 04, 2018, whereby his claim was rejected finding that the petitioner is not eligible for getting benefit under the Rule 12 of the 1971 Rules.

9. As far as the contempt petition is concerned, in our opinion, the Tribunal has not gone wrong in opining that the order stood complied with the rejection of the case of the petitioner. Hence, no contempt was made out. Even, otherwise we do not find any error in the order of rejection of the claim of the petitioner for grant of compassionate allowance. The Rule 12 of the 1971 Rules on which the claim of the petitioner was based is reproduced hereunder.

“12. Misconduct or inefficiency:-No pension may be granted to an officer dismissed or removed for misconduct, insolvency or inefficiency; but to officers so dismissed or removed compassionate allowance may be granted when they are deserving of special consideration; provided that the allowance granted to any officer shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on medical certificate”

A perusal of the aforesaid Rules shows that no pension may be granted to an officer ‘dismissed or removed for misconduct, insolvency or inefficiency’. But the officers so dismissed or removed, compensatory allowance may be granted in deserving cases on special consideration. The case of the petitioner will not fall within scope of the Rule 12 of the 1971 Rules. His dismissal is not on account of

misconduct, insolvency or inefficiency rather it is on account of his conviction under Section 304 Part-I of IPC. A dismissed employee who has been convicted under Section 304 Part-I of IPC cannot be heard to claim that some compassion be shown towards him, when he did not care for life of another person.

10. For the reasons mentioned above, we do not find any merit in the present petition. The same is accordingly dismissed.

(RAJESH BINDAL)
JUDGE

(ANIRUDDHA ROY)
JUDGE

Kolkata
26/02/2021

PA(SG)