

Vs. Board of Trustees for the Port of

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Court : Kolkata

Decided On : Aug-16-2012

Judge : Debasish Kar Gupta

Respondent : Board of Trustees for the Port of

Judgement :

ORDER

SHEET G.A.No.925 of 2012 W.P.No.904 of 2007 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE BAIDYA NATH GHOSH Petitioner Versus BOARD OF TRUSTEES FOR THE PORT OF KOLKATA & ORS.Respondents BEFORE: The Hon'ble JUSTICE DEBASISH KAR GUPTA Date :

16. h August, 2012.

For Applicant : Mr.Arunava Ghosh, Advocate with Mr.Sougata Bhattacharya, Advocate For Respondents: Mr.Hiranmay Bhattacharyya, Advocate with Mr.Chandra Nath Sarkar, Advocate G.A.No.925 of 2012 The Court : This is an application for review of the judgment and order dated February 9, 2012 delivered in the matter.

By virtue of the above judgment, it has been held that the order dated November 25, 2005, passed by the respondent no.3, so far as the exclusion of two stagnation increments for the purpose of determination of pension of petitioner is concerned.,

could not be sustained in law.

It is submitted by Mr.Arunava Ghosh, learned Counsel appearing on behalf of the applicants/respondents, that the above judgment was delivered considering the claim of the petitioner in the light of the provisions of CCS Pension Rules and the statements made by the deponent of the affidavit in opposition filed on behalf of the respondents.

According to Mr.Ghosh, CCS Pension Rules were not applicable in case of calculation of pension of the petitioner.

According to him, the above Rules could not be made applicable in case of an employee of the Calcutta Port Trust until and unless the above Rules are made applicable in accordance with the provisions of Section 28 of the Major Port Trust Act, 1963.

So far as the question of admission made in paragraph 8 of the affidavit in opposition filed on behalf of the respondents is concerned, it is submitted by Mr.Ghosh that if the statement runs contrary to the statutory provisions, no weightage could be given to the same.

On the other hand, learned Counsel submitted appearing on behalf of the petitioner, that the claim of the petitioner was adjudicated in the light of the Calcutta Port Trust Employees (Pension) Regulations, 1988 and not in accordance with the provisions of CCS Pension Rules, which were applicable to the Central Government employees.

It is also submitted by Mr.Bhattacharyya that the statements made in paragraph 8 of the above affidavit in opposition were also based on the provisions of the aforesaid Regulations, 1988.

I have heard the learned Counsel appearing for the respective parties.

I have also considered the aforesaid judgment dated February 9, 2012, delivered in the writ application.

In considering the claim of the petitioner, the provisions of Regulations 3 and 21 of the Calcutta Port Trust Employees Pension Regulations, 1988 were taken into consideration for the purpose of interpreting the terms average emolument. After interpreting the aforesaid term, this Court came to a conclusion that inclusion of two stagnation increments for the purpose of determination of the pension of the petitioner could not be sustained in law.

Therefore, the claim of the petitioner was adjudicated in the light of the provisions of Calcutta Port Trust Employees (Pension) Rules, 1988 and not on the basis of the provisions of CCS Pension Rules.

So far as the second ground review of the aforesaid judgment is concerned, I find that after interpretation of the aforesaid provisions the statements were taken into consideration as the same were in support of the above conclusion.

Therefore, the aforesaid statement was not the only consideration before this Court to decide the claim of the petitioner.

In view of the applicants/respondents above, so no far relief as the can be review granted to application the is concerned.

This review application is, therefore, dismissed.

There will be, however, no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(DEBASISH KAR GUPTA, J.) SN.

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