Ajit Kumar Basu Vs. the Board of Trustees for the Port of Calcutta and ors.

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SooperKanoon Citation : sooperkanoon.com/1059399

Court : Kolkata

Decided On : Oct-11-2012

Judge : Nadira Patherya

Appellant : Ajit Kumar Basu

Respondent : The Board of Trustees for the Port of Calcutta and ors.

Judgement :

ORDER
SHEET IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE WP 128.OF 200.AJIT KUMAR BASU Versus THE BOARD OF TRUSTEES FOR THE PORT OF CALCUTTA & ORS.BEFORE: The Hon'ble JUSTICE PATHERYA Date :

11. h October, 2012.

Mr.Hiranmoy Bhattacharyya, Advocate Mr.Chandra Nath Sarkar, Advocate for petitioner Ms.S.Ghosh, Advocate for respondents The Court :- The issue involved in this writ petition is with regard to inclusion of stagnant increment as a part of pay for calculating pension benefits of the petitioner.

This issue has been decided in WP 90.of 2007 by order dated 9.2.2012.

An application for review was filed by the Calcutta Port Trust and the same was dismissed by order dated 16.8.2012.

Subsequently certain typographical errors have been corrected by order dated 25.9.2012.

Counsel for the petitioner submits that the issue has already been decided in the aforementioned writ petition and the orders passed therein be followed to maintain comity of Courts as no appeal has been filed from the said ordeRs.Counsel for the Calcutta Port Trust submits that the Port Trust Employees Pension Regulations of 1988 will apply to the petitioner as Section 28 of the Port Trust Act empowers the respondent authority to make regulations.

Accordingly, the regulations of 1988 were framed.

The relevant regulations are regulations 20 and 21.

Regulation 20 has defined the word emolument and has nowhere included stagnant increment as a part of pay.

Therefore, stagnant increment cannot be considered as pay while calculating pension benefit.

By circulars dated 21.1.1999 and 6.8.1999 dearness allowance is to be treated as pay, so also the emolument specifically mentioned in the memo dated 6.8.1991 is also to be treated as pay.

In both the circulars there is no mention of stagnant increment to be treated as pay.

Therefore, stagnant increment ought not to be treated as pay for calculating pension.

Therefore, this application merits no order.

In reply Counsel for the petitioner submits that in the pay slip issued to the petitioner the stagnant increment has been accepted as a part of pay.

This is also found in the order of the Pension Adalat.

Having considered the submission of the parties Rule 20 of 1988 regulations deals and defines emoluments and include any other emolument which may be specifically classed as pay.

From the pay slip the petitioner has enclosed that stagnant increment has been included as the current wage along with the pay is evident.

This is also mentioned in the order dated 25.11.2005.

Therefore, not treatment of stagnant increment as pay calls for interference with the order dated 25.11.2005.

This reasoning is in addition to the reasoning contained in the order dated 9.2.2012.

Another reason for passing this order this day, is that the order dated 9.2.2012 came to the knowledge of the respondent authority and a review application was filed which was dismissed on 16th August, 2012.

No appeal has been filed from either the original order or order dated 16.8.2012 whereby the review application has been dismissed.

There is no reason to defer with the reasoning of the order dated 9.2.2012 and 16.8.2012 as corrected on 25.9.2012 and in view thereof this application is disposed of.

All parties to act on a signed photostat copy of this order on the usual undertakings.

GH.

(PATHERYA, J.)