

**IN THE WEST BENGAL ADMINISTRATIVE  
TRIBUNAL  
BIKASH BHAVAN, SALT LAKE CITY  
K O L K A T A – 7 0 0 0 9 1**

**Present :-**

**The Hon'ble Smt. Urmita Datta (Sen)  
Member (J)**

**-AND-**

**The Hon'ble Sayeed Ahmed Baba  
Member ( A )**

**J U D G M E N T**

**-of-**

**Case No. O.A. - 645 of 2018**

**Dr. Siddhartha Swarup Sarkar .....Applicant**

**-Versus-**

**State of West Bengal & others....Respondents**

**For the Applicant : - Dr. Siddhartha Swarup Sarkar  
Appeared in person**

**For the State Respondent:- Mr. S.N. Ray &  
Mr. S. Ghosh  
Advocates**

**For PSC, WB : Mr. A.L. Basu  
Advocate**

**Judgment delivered on : 15.12.2021**

**The Judgment of the Tribunal was delivered by :-  
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

## Judgement

1. The instant application has been filed praying for following relief(s):

“(a) A direction do issue upon the concerned respondent authorities to forthwith set aside/cancel/rescind/withdraw/revoke the impugned Order No.363-F(H)/FA/o/1S-8/40/95(Pt-VI), dated 18.01.2018 signed by the Deputy Secretary to the Government of West Bengal, with the approval of Additional Chief Secretary, Finance Department, being Annexure-‘I’ herein along with all other orders thereby revoking and/or reviving legal force to the Order No.3009-F(H), dated 06.06.2016 signed by the Joint Secretary, with the approval of the Principal Secretary, Finance Department, benefitting the applicant with Rule 8(I) of the Public Service Commission (Conditions of Service and Miscellaneous Provisions) Regulations, 1953 and to disburse all arrear salaries inclusive of all retiring benefits with regular pension and arrear salary, all with interest, and to command them to act strictly in accordance with law.

(b) A direction do issue upon the concerned respondent authorities to forthwith produce and/or cause to be produced entire records

relating to the applicant's case and on such production being made, render conscionable justice upon perusing the same:

(c) And/or to pass such other or further Order or Orders as to this Hon'ble Tribunal may deem fit and proper.

2. The case of the Applicant is as follows:

- (i) The Applicant, being a retired WBCS(Exe), was initially appointed in 1983 and was subsequently posted on deputation as Legal Advisor, West Bengal State Electricity Distribution Company Limited vide Memo. dated 03.01.2008(Annexure-A). The Applicant was due to retire on superannuation on and from 31.08.2014(Annexure-A). However, the Applicant was appointed as Member of Public Service Commission, West Bengal vide Notification No. 3602-F(H), dated 09.07.2014(Annexure-A) issued by the Finance Department, Government of West Bengal.
- (ii) In pursuant to appointment as Member of Public Service Commission, West Bengal, the Applicant submitted an application to the Chairman-cum-Managing Director, West Bengal State Electricity Distribution Company Limited(WBSEDCL) asking for his release vide letter dated 11.07.2014(Annexure-B). Subsequently, the Applicant has also submitted an application for voluntary retirement before the Secretary, Personnel & Administrative Reforms Department, Government of West Bengal vide letter dated 15.07.2014(Annexure-B)
- (iii) The Applicant had relinquished charge as Legal Advisor, West Bengal State Electricity Distribution Company Limited vide letter dated 01.08.2014 in the forenoon and

joined as Member, Public Service Commission, West Bengal in the afternoon of 01.08.2014(Annexure-C).

- (iv) In the mean time, vide Notification No. 1381-PAR(WBCS)/8P-120/14 dated 25.07.2014, the application for voluntary retirement of the Applicant was accepted by the Governor and he was allowed to retire from his parent service from 31.07.2014(afternoon) in terms of Rule 75(aaa) of WBSR Part-I (Annexure-C).
- (v) As per the Applicant, as he was not earlier aware of the provisions of the West Bengal Public Service Commission (Conditions of Service and Miscellaneous Provisions) Regulations, 1953, he would have not get the benefit of Regulation 8(I) of the aforesaid Regulation. Therefore, he made a representation to the Secretary, Personnel & Administrative Reforms Department, Government of West Bengal, praying for withdrawal of his application of voluntary retirement by way of cancelling the earlier order dated 25.07.2018 vide letter dated 15.09.2014 to the Secretary, Personnel & Administrative Reforms Department, Government of West Bengal.
- (vi) As his voluntary retirement issue was still not settled by the State Government, he was not getting retiral benefit of his erstwhile job. Therefore, the Applicant made an application to the Secretary, Personnel & Administrative Reforms Department, Government of West Bengal vide letter dated 11.03.2015 asking for payment of his retiral benefit (Annexure-D). The Applicant has submitted again one representation dated 27.01.2015 to the Chief Secretary, Government of West Bengal asking for cancelling of Voluntary Retirement order and issue a simple release order and to add his service as past service along with the

service rendered by him as Member, Public Service Commission, West Bengal (Annexure-D).

- (vii) However, his prayer for revocation of order for acceptance of voluntary retirement on 25.07.2018 was rejected by the competent authority communicated by the OSD & E.O. Joint Secretary to the Government of West Bengal vide Memo. No. 1473-PAR(WBCS)/8P-120/14 dated 10.09.2015 (Annexure-E). The Applicant again submitted a representation to the Chief Secretary, Government of West Bengal asking for extension of benefit of Regulation 8(I) of the West Bengal Public Service Commission (Annexure-C). The Applicant, thereafter also made repeated representation to the Authority and the Secretary, Public Service Commission, West Bengal vide his communication dated 16.03.2016 made to the Principal Secretary, Finance Department, had forwarded the representation of the Applicant for consideration and necessary action (Annexure-F). Thereafter, the Joint Secretary to the Government of West Bengal vide his Memo. No. 3009-F(H), dated 06.06.2016 to the Secretary, Public Service Commission, West Bengal had communicated that the applicant is entitled of the benefit of the provisions contained in Part-4(benefit) and Part-8(i) of West Bengal Public Service Commission (Annexure-F). In response to that, the Chairman, Public Service Commission, West Bengal has asked for updated service-book of the Applicant from the Joint Secretary to the Government of West Bengal, P&AR Department vide letter dated 09.06.2016. Subsequently, the pay of the Applicant was fixed vide Memo. No. 519-PAR(WBCS)/8P-24/14, dated 11.05.2017 (Annexure-G). In the mean time, the

OSD & E.O., Joint Secretary to the Government of West Bengal forwarded the service-book of the Applicant to the Chairman, Public Service Commission, West Bengal vide Memo. dated 18.05.2017(Annexure-G). In the mean time, the Joint Secretary, Public Service Commission, West Bengal vide Memo. No.1792-PSC dated 25.10.2017 had returned back the updated service-book of the Applicant for taking necessary action for settlement of pension and other related pensionary benefit to the Assistant Secretary to the Government of West Bengal, Personnel & Administrative Reforms Department (Annexure-H). The Secretary, Public Service Commission, vide Memo. No. 1932-PSC, dated 21.11.2017 issued to the Special Secretary to the Government of West Bengal, Finance Audit Department, had communicated that the Applicant was appointed as a fresh appointee (Annexure-H) and ultimately the Deputy Secretary to the Government of West Bengal vide his Memo. No.363/1(4)-F(H) dated 18.01.2018 to the OSD & E.O. Joint Secretary, Personnel & Administrative Reforms Department, had communicated that the voluntary retirement of the Applicant had taken effect with effect from 31.07.2014 and the Applicant assumed his charge on 01.08.2014 and subsequently he had made an application for revocation of his voluntary retirement. Therefore, the Pension Branch of Finance Department is of view that that Applicant is entitled to retirement benefit up to 31.07.2014 in terms of order No.6620-F dated 20.08.1981 and in terms of Rule 58, 59 & 60 of WBS(DCRB) Rules, 1971 and asked for settlement of pensionary benefit of the Applicant accordingly. Being aggrieved, the Applicant had preferred the instant application.

3. The Respondents have filed their written reply, wherein it has been stated that the Applicant retired voluntarily from the State Government Service with effect from 31.07.2014 vide order dated 25.07.2014 and joined as Member, Public Service Commission, West Bengal on 01.08.2014. Later on the Applicant prayed for withdrawal of voluntary retirement vide letter dated 15.09.2014, which was regretted by the State Government vide Memo. dated 10.09.2015. As per the Finance Department order dated 12.01.2018, it would transpire that the case of the Applicant was referred to Learned LR on the point of previous service counting for pensionary benefit wherein the Ld. LR, WB was of the opinion that Dr. Sarkar is entitled pensionary benefit as admissible wherein he retired on superannuation either in normal course or by way of retirement as per the provisions of WBS (DCRB) Rules, 1971. As the Applicant retired with effect from 31.07.2014 from the State Government, the date of granting benefit would be from 01.08.2014. Therefore, there is a overdrawls of salary by the Applicant amounting to Rs.11,92,934/- for the period from 01.08.2014 to 20.08.2016 as per PSC Memo. dated 31.08.2018 (Annexure-R/7).

However, in compliance to the Hon'ble Tribunal's order dated 12.10.2018 and order dated 12.02.2019, an order was issued sanctioning provisional pension in favour of the Applicant at the rate of Rs.23,232/- with effect from 01.03.2019 for next 12 months up to 29.02.2020 subject to recovery of Rs.63,750/- due in House Building Allowance in his period of service as Ex-Legal Advisor, West Bengal State Electricity Distribution Company Limited and over-drawl of salary of Rs.11,92,934/- only for his period of service as Member of Public Service Commission, West

Bengal during the final settlement of pension case by Pr. AG(A&E), West Bengal.

Subsequently, in accordance with the order dated 12.02.2019, a fresh order vide Memo. dated 13.02.2019 was issued in cancelling of this Department's earlier Memo. dated 12.02.2019 and in compliance of interim order dated 12.10.2018 and 12.02.2019, sanction of provisional pension in terms of Finance Department's GO No.10000-F, dated 13.02.1982 at the rate of Rs. 23,232/- only, i.e., 80% of the total admissible pension with effect from 01.09.2016 for 12 months up to 31.08.2017 in view of the applicant (Annexure-R/8). It has been submitted by the Respondent that as the application of voluntary retirement of the Applicant was already been accepted vide order dated 25.07.2014, which was due to be taken into effect from 31.07.2014. Further the Applicant after relinquishing his charge as Legal Advisor, West Bengal State Electricity Distribution Company Limited(WBSEDCL), joined as Member, Public Service Commission, West Bengal on and from 01.08.2014 without withdrawing the application for voluntary retirement. However, withdrawal of voluntary retirement application and resuming the duty as Member, Public Service Commission, West Bengal, is not acceptable as per Rules and settled principle of law. Therefore, his pensionary benefit has been rightly fixed as per the Rules.

4. The Applicant has filed a rejoinder denying the contention of the Respondents and has submitted that he should get the benefit of Regulation 8(I) of Public Service Commission, West Bengal for fixing of his pension and pensionary benefit. In support of his contention, he has referred the following judgements:-



- (i) Order dated 12.03.2019, Civil Appeal No. 2928/2019 arising out of SLP(C) No.28608/2018  
State of West Bengal & Ors. -Versus-  
Dr. Tonmay Mondal
- (ii) (1997) 4SCC 280  
Power Finance Corporation Limited –  
Versus- Pramod Kumar Bhatia.
- (iii) 2003 Supp. (5) SCR 282  
Dr. R.N. Rajanna –Versus- State of  
Karnataka & Ors.
- (iv) K.L.E. Society–Versus- Dr. R.R. Mittal  
Civil Appeal 4509 of 2000 26.4.2002

Public Service Commission, West Bengal has filed a reply wherein they have preliminary objected on the point of jurisdiction. As per the Public Service Commission, West Bengal, the Applicant was appointed as Member, Public Service Commission, West Bengal, which is an autonomous constitutional body. However, the Applicant has come before this Tribunal for asking for benefit of Regulation 8(I) of the Public Service Commission, West Bengal. As the Applicant was not holding a post of pensionable service, when he joined Public Service Commission, West Bengal on 01.08.2014 (As he had voluntarily retired from his pensionable service with effect from 31.07.2014), therefore he is not entitled to get the benefit of Regulation 8(I) of the Public Service Commission, West Bengal. Therefore, the Counsel for the Public Service Commission, West Bengal has prayed for rejection of the instant application.

We have heard both the parties and perused the records. It is noted that the Applicant has filed the instant application mainly praying for a direction to the Respondent Authority to revoke and cancel the impugned order dated 18.01.2018, whereby the OSD & Ex-Officio Deputy Secretary to the Government of West Bengal, Department of Finance had communicated that the Applicant is entitled to retirement benefit for his service under the Government of West Bengal up to 31.07.2014 as voluntary retirement took effect from 31.07.2014 as per the Department order dated 25.07.2014. In the aforesaid letter, it has been further communicated that the earlier Memo. dated 06.06.2016 issued by the Department to the Public Service Commission, West Bengal towards final settlement of pension benefit of the Applicant stood cancelled.

It is noted that the Applicant was served with an appointment letter for the post of Member of Public Service Commission, West Bengal on 09.07.2014 (Annexure-A). Thereafter he had also submitted an application for voluntary retirement to the Secretary, Personnel & Administrative Reforms Department vide letter dated 15.07.2014 (Annexure-B), which was subsequently accepted vide Notification dated 25.07.2014 and he was allowed to retire from his parent service from 31.07.2014 (Annexure-C). As per the Applicant, the said letter dated 25.07.2014 was received by him on 01.08.2014 and he relinquished his charges as Legal Advisor, West Bengal State Electricity Distribution Company Limited to join as Member, Public Service Commission, West Bengal on the very day vide letter dated 01.08.2014 (Annexure-C) i.e., on 01.08.2014. However, after joining to the post of Member, Public Service Commission, West Bengal on 01.08.2014, subsequently, he made an application to the Secretary, Personnel & Administrative Reforms Department praying for withdrawal of his voluntary retirement application on 15.09.2014 (Annexure-D).

It is further observed that in his voluntary retirement application dated 15.07.2014, he had made following prayer:-

“With due respect and humble submission I beg to state you that I am a WBCS(Exe) Officer of 1982 batch. I have been appointed to act as the Member, Public Service Commission, West Bengal vide No. 3602-F(H), dated, Howrah, 9<sup>th</sup> July, 2014.

To join this Constitutional post, I would request you to kindly grant me voluntary retirement from the service at an early date.”.

Subsequently, after his voluntary retirement was accepted vide Order dated 25.07.2014, he had relinquished his charge as Legal Advisor, West Bengal State Electricity Distribution Company Limited on 01.08.2014 and thereafter joined as Member, Public Service Commission, West Bengal. Therefore, from the perusal of the above facts, it is clear that the application of the Applicant for voluntary retirement was not only accepted by the Respondent Authority and communicated to him but he also relinquished his charge as Legal Advisor, West Bengal State Electricity Distribution Company Limited on 01.08.2014 and on the same date he joined as Member, Public Service Commission, West Bengal. Therefore, it is obvious that the Applicant had acted upon the voluntary retirement Order dated 25.07.2014 on 01.08.2014 by way of relinquishing charge and assumption of charge as Member, Public Service Commission, West Bengal. However, subsequently the Applicant changed his mind and prayed for revocation of voluntary retirement order of the Respondent Authority. Thereafter, his prayer for revocation of voluntary retirement order dated 25.07.2014 was subsequently rejected by the impugned order dated 18.01.2018 on

the ground that his voluntary retirement had already took effect from 31.07.2014 as per Government Order dated 25.07.2014.

As per the Applicant, his voluntary retirement application was made as per the instruction of the higher authority, when he was not aware of the Regulation 8(I) “The West Bengal Public Service Commission (Conditions Of Service & Miscellaneous Provisions) Regulations, 1953”. It is a settled principle of law that an application for voluntary retirement could have been withdrawn before the acceptance of the same. But in the instant case, the Applicant, after taking steps as per voluntary retirement Order, had subsequently applied for revocation/withdrawal of the voluntary retirement, which is not permissible as his voluntary retirement application was already accepted before his revocation and he had already acted upon such acceptance.

During the course of the hearing, the Counsel for the Applicant has referred certain judgements as referred above. With regard to the case of Dr. Tanmoy Mondal, it is noted that the issue involved in the said judgement is whether the Division Bench of the Hon’ble High Court, Calcutta was right in reviewing the earlier judgement, vis-à-vis, whether the voluntary retirement can be denied in public interest or not. Therefore, the said case has no relevancy with regard to the fact of the instant case. With regard to the case of Power Finance Corporation Limited, it is observed that the Hon’ble Appex Court had held that unless the employee is relieved from the duty after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since in the said case, the employee concerned was not relieved due to the conditions for clearance of outstanding dues for the purpose of acceptance of voluntary retirement was there and the employee concerned was not relieved. Therefore, the voluntary retirement was held not to have been effective.

In the instant case, the voluntary retirement application was accepted by the State Government and the Applicant had relinquished his charge from the post of Legal Advisor as State Government Employee and acted upon by joining the post of Member, Public Service Commission, West Bengal. Therefore, the aforesaid judgement is not helpful for the Applicant. The fact of the case of Dr. R.N. Rajanna is not relevant in the instant case. The case of K.L.E. Society is also distinguishable as in the said case, the application for voluntary retirement was withdrawn prior to the acceptance of the said voluntary retirement application whereas in the instant case, the application for voluntary retirement of the Applicant was accepted vide order dated 25.07.2014 and he relinquished his charge as Legal Advisor, WBSEDCL on 01.08.2014 and joined as Member, Public Service Commission, West Bengal on the same day and subsequently after two months, he made an application for withdrawal of voluntary retirement on 5.9.2014.

Therefore we are of the opinion that the Respondent Authority have rightly rejected the prayer for withdrawal of the voluntary retirement after its acceptance as well as implementation of the said order. The Applicant has further submitted that he is entitled for benefit of Regulation 8(I) "The West Bengal Public Service Commission (Conditions Of Service & Miscellaneous Provisions) Regulations, 1953". The Counsel for the Public Service Commission, West Bengal has raised a preliminary objection with regard to the jurisdiction of this Tribunal as the Public Service Commission, West Bengal is a Constitutional Body and the Members of the Public Service Commission, West Bengal are not civil post holders under the Government. Therefore, this Tribunal has no jurisdiction over the Public Service Commission, West Bengal. However, it is noted that the Applicant was not in pensionable service at the time of joining as Member, Public Service Commission, West Bengal, therefore, he is not covered by the Regulation 8(I) "The West

Bengal Public Service Commission (Conditions Of Service & Miscellaneous Provisions) Regulations, 1953”. During the course of the hearing, the Counsel for the Applicant has submitted that he has been granted additional pension at the rate of Rs.6640/- per month from 21.08.2016 vide Order dated 12.08.2021 by the Senior Accounts Officer/Pension (X), Indian Audit & Accounts Office of the Principal Accountant General(A&E). Subsequently, the Commissioner, Finance Department, Government of West Bengal, vide order dated 23.08.2021 has communicated that the Governor has been pleased to accord sanction to the payment of additional pension at the rate of Rs.6640 per month from 21.08.2016. Therefore, though he has not been granted any benefit under Regulation 8(I) “The West Bengal Public Service Commission (Conditions Of Service & Miscellaneous Provisions) Regulations, 1953” of Public Service Commission, West Bengal, however he has been granted an additional pension as per Regulation 8(IA) of “The West Bengal Public Service Commission (Conditions Of Service & Miscellaneous Provisions) Regulations, 1953” of Public Service Commission, West Bengal.

In view of the above, we do not find any reason to interfere with the decision of the said Respondent. Accordingly, the OA is dismissed being devoid of merit with no order as to cost.

**Sayeed Ahmed Baba**  
MEMBER (A)

**URMITA DATTA (SEN)**  
MEMBER (J)