

STATE OF WEST BENGAL
v.
HARESH C. BANERJEE AND ORS.

MAY 26, 2004

[RAJENDRA BABU, C.J. AND P. VENKATARAMA REDDI, J.]

Service Law :

West Bengal Services (Death-cum-Retirement Benefit) Rules :

Constitutional validity of—On appeal, Held: Since the question involving validity of Rule 10(1) affecting large number of employees, it has to be examined by a larger Bench—However, State Government to comply with the High Court's direction for making payment of arrears—West Bengal (Classification, Control & Operation) Rules, 1971; sub-rule (1) of Rule 10.

The question which arose for consideration in this appeal was regarding constitutional validity of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules. High Court held the same *ultra vires* the Constitution. Hence the present appeal. This Court while granting leave made it clear that even if appeal succeeds the benefit available to respondent No. 1-retired employee in accordance with the impugned order of the High Court would not be recalled and the State Government was directed to make payment of arrears, if any.

Referring the matter to a larger Bench, the Court

HELD : The sole question for consideration is the constitutional validity of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules. The same involves larger question arising as to the operation of the West Bengal (Classification, Control and Operation) Rules. Since, the question may often arise affecting a large number of employees, the matter is referred to a larger Bench. [782-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2579 of 1998. H

A From the Judgment and Order dated 6.5.1996 of the Calcutta High Court in F.M.A.T. No. 1202 of 1998.

Tapas Ray and S.K. Nandy for the Appellant.

B Amlan Kumar Ghosh for the Respondents.

The Judgment of the Court was delivered by

C **RAJENDRA BABU, CJ.** : In this matter, the constitutional validity of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules (for short 'the Rules') is involved and the High Court has held that the same is *ultra vires* the Constitution and that conducting the departmental enquiry against the respondent after his retirement was also held to be *ultra vires* the Constitution.

D This Court, by an order made on 1.5.1998, while granting leave on the question of *vires* of Rule 10 of the Rules, directed that even if this appeal succeeds the benefit available to respondent No. 1 in accordance with the judgment of the High Court will not be recalled and the appellant shall make available to respondent No. 1 all the arrears, if any, payable
E as per the impugned order of the High Court within the stipulated time.

F Now the sole question for consideration is the validity of Rule 10(1) of the Rules. The same involves larger question arising as to the question of the West Bengal (Classification, Control and Operation) Rules, 1971 and sub-rule (1) of Rule 10 of the said Rules. As such questions may often arise affecting a large number of employees, we think it appropriate to refer this matter to a larger bench.

S.K.S.

Referred to the Larger Bench