

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak**

And

**The Hon'ble Justice Md. Shabbar Rashidi**

**WP.ST 187 of 2015**

**Dilip Kumar Saha**

**VS.**

**State of West Bengal & Ors.**

For the Petitioner : Mr. Biswanath Chakraborty,  
Ms. Debolina Chakraborty, Advocates

For the State : Mr. Tapan Kumar Mukherjee, AGP  
: Mr. Somnath Naskar, Advocates

Heard & Judgement on : *September 26, 2023*

**DEBANGSU BASAK, J.**

**1.** The writ petition is directed against an order dated May 6, 2015 passed by the West Bengal Administrative Tribunal in OA 749 of 2013.

**2.** By the impugned order, the learned Tribunal found that, although, the intervening period between the services of the writ petitioner being terminated as Sample Collector under the Cholera Study Project and his appointment as a Health Assistant being regularized by grant of extraordinary leave and although, the previous period of service as Sample

Collector of the writ petitioner can be counted for the purpose of pensionary benefits, the writ petitioner was found not to be eligible for New Intermediate Selection Grade (NISG). Therefore, the learned Tribunal turned down the challenge of the writ petitioner directed against the order of withdrawal of the NISG benefit granted to the writ petitioner, subsequent to his retirement.

**3.** Learned advocate appearing for the writ petitioner submits that, the writ petitioner was initially appointed as Sample Collector on August 3, 1964. His services were subsequently terminated on December 31, 1965. Thereafter, on January 7, 1966, he was absorbed in the post of Health Assistant along with other Sample Collectors. The writ petitioner continued in such services. The writ petitioner was afforded the NISG benefit during his service career. However, subsequent to the superannuation of the writ petitioner on December 31, 2006, the NISG benefit extended to the writ petitioner were sought to be withdrawn by an order dated August 3, 2009.

**4.** Learned advocate appearing for the writ petitioner submits that, NISG benefit received by the writ petitioner was adjusted from the pensionary benefits receivable by the writ petitioner. Aggrieved by such action of the authorities, of the withdrawal of NISG benefit subsequent to the superannuation, the writ petitioner approached the Tribunal in which the impugned order was passed. He contends that, apart from the writ petitioner, to the knowledge of the writ petitioner, benefit of NISG which was extended to other similarly situated and circumstanced persons, were not withdrawn.

**5.** Learned advocate for the writ petitioner relies upon an unreported decision of the Hon'ble Supreme Court rendered on **July 15, 2008** in **Civil Appeal No. 4446 of 2008** (Arising out of **SLP (C) No. 14099 of 2006**)

***[State of Haryana & Anr. Vs. Deepak Sood & Ors.] with Civil Appeal No. 4447 of 2008 (Arising out of SLP (C) No. 10857 of 2006) [State of Haryana & Ors. vs. Hari Parkash & Ors] and AIR 1999 SC 598 [Dwijen Chandra Sarkar & Anr. Vs. Union of India & Anr.]*** for the proposition that, past services can be considered for the grant of financial benefits.

6. Referring to the NISG Scheme, learned advocate for the writ petitioner submits that, the writ petitioner possessed 10 years of qualifying service to receive the benefits under the scheme. The authorities erred in withdrawing the benefits granted during the service period of the writ petitioner.

7. Learned senior advocate appearing for the State submits that the writ petitioner was declared surplus on December 31, 1965. Therefore, his service as Sample Collector stood terminated with effect from such date. His subsequent appointment as Health Assistant will come into effect from the date of his appointment as a Health Assistant which is January 3, 1966. Under the NISG Scheme, the incumbent must possess 10 years of qualifying service. In the present case, the writ petitioner did not possess 10 years of qualifying service as prescribed by the NISG Scheme for the writ petitioner to receive the benefits thereof. On discovery of the mistake as against the writ petitioner, such benefits were adjusted from the pensionary benefits receivable by the writ petitioner. He contends that, the writ petitioner cannot take the benefits of negative equality. In the event, same benefits given to other similarly situated and circumstanced persons were not withdrawn, it will not enure to the benefit of the writ petitioner.

**8.** The records placed before us demonstrate that the writ petitioner was engaged as Sample Collector under the Cholera Study Project under the Scheme of Pay No. 125-3-140-4-200 plus Research Allowance of Rs.80/- and other admissible allowances by a writing dated July 30, 1964. By a writing dated November 27, 1965, the writ petitioner was informed that, since the scheme under which, he was appointed, would stand terminated with effect from December 31, 1965, consequently his services would also be terminated with effect from such date.

**9.** By a writing dated January 3, 1966, the writ petitioner along with others were appointed as Health Assistant under the Directorate of Health Services. By a writing dated April 18, 1978, the period between January 1, 1966 to January 6, 1966 during which, the writ petitioner was not employed, was regularized by grant of extraordinary leave to the writ petitioner.

**10.** Government promulgated NISG Scheme which requires that, such Scheme shall be admissible after 10 years of service in the grade next below.

**11.** Indisputably, the writ petitioner was extended the benefit of NISG Scheme. The writ petitioner superannuated on December 31, 2006. A Pension Payment Order was also issued in favour of the writ petitioner. Thereafter, by a writing dated August 3, 2009, the benefits under the NISG Scheme were sought to be withdrawn and the benefits receivable by the writ petitioner thereunder, were sought to be adjusted against the pensionary benefits receivable by the writ petitioner. Aggrieved by such decision dated August 3, 2009, the writ petitioner approached the Tribunal by way of OA 749 of 2013.

**12.** The challenge of the writ petitioner was negated by the Tribunal by the impugned order.

**13.** Significantly, in the impugned order, the learned Tribunal notes that intervening period between the termination of the services of the writ petitioner as a Sample Collector and his appointment as a Health Assistant was regularized by the grant of extraordinary leave. The Tribunal also proceeds to note that previous service can be counted for the purpose of pension. Despite returning such finding, the Tribunal proceeded not to interfere with the decision of the authorities in withdrawing NISG benefit to the writ petitioner.

**14.** **Deepak Sood** (supra) considers **Dwijen Chandra Sarkar** (supra) and is of the following view :-

*"... ..Therefore, in the series of judgments given by this Court the view has been taken that in case of a transfer/absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. ... .."*

**15.** In light of the ratio laid down in **Deepak Sood** (supra) and more particularly, when, 7 days gap in service of the writ petitioner was regularized by grant of extraordinary leave by the authorities, we are of the view that the writ petitioner possessed the requisite qualification to be extended NISG benefit on the date he was so extended. Therefore, withdrawal of NISG benefit from the writ petitioner, that too, after his superannuation is arbitrary and harsh so far as the writ petitioner is concerned. We, therefore, quash the letter dated August 3, 2009 directing

withdrawal of NISG benefit given to the writ petitioner. We reinstate the same. We direct the authorities to reimburse NISG benefit which was adjusted against the retiral benefits of the writ petitioner, forthwith.

**16.** In view of the discussions above, the impugned order of the Tribunal is set aside.

**17.** WP.ST 187 of 2015 is **allowed** without any order as to costs.

**(Debangsu Basak, J.)**

**18.** I Agree.

**(Md. Shabbar Rashidi, J.)**