

(2011) 04 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 28289 (W) of 2008

Amrita Kumar Pradhan

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Citation : (2011) 04 CAL CK 0032

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Saibal Acharya, for the Appellant; Nilima Das, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—The Petitioner herein, who was an assistant teacher of Bhogpur K.M. High School in the District of Purba Medinipur, retired from service on superannuation with effect from 30th November, 2003. At the time of settlement of the retiral dues of the Petitioner, it was detected by the Joint Director of Accounts that the Petitioner was paid his salary in excess of his entitlement during the tenure of his service due to wrong pay fixation. Accordingly, the pension papers, which were submitted to the District Inspector of Schools by the School Authority prior to the retirement of the Petitioner, were all returned to this school for resubmission of the pension papers after recasting the pay structure of the Petitioner, and also for assessment of the amount overdrawn by the Petitioner during the tenure of his service. The Head Master of the said school, accordingly, recast the pay structure of the Petitioner and calculated overdrawal amount and then resubmitted the entire paper to the office of the District Inspector of Schools for processing the pension papers of the Petitioner so that the retiral benefits can be given to the Petitioner immediately after his retirement. It was, thus, detected that the sum of Rs. 53,810/- was overdrawn by the Petitioner in excess of his entitlement towards his salaries during the tenure of his service. On the basis of such resubmitted papers, the Director of Pension, Provident Fund and Group Insurance issued a pension

payment order on 10th November, 2003. It appears from the said pension payment order that the said overdrawn amount of Rs. 53,810/- was adjusted against the death-cum-retiring gratuity of the Petitioner. The Petitioner is aggrieved, as the said amount of Rs. 53,810/- was recovered from the Petitioner from his retiral dues. Hence he has filed the instant writ petition before this Court.

2. The question as to whether such overdrawal amount in pay can be recovered from a retired person from the retiral dues after his retirement, has already been decided by this Hon"ble Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, wherein it was held that if a retired person had no hand either in the process of the fixation of pay or further payment, the overdrawal amount cannot be adjusted and/or realized from the retiral benefits of such retired person after his retirement. It was further held that such recovery of overdrawal in pay from the retiral benefits of a retired person after his retirement is possible only when it is found that such payment was made due to erroneous pay fixation by the authority and such error in fixation of the pay scale was resulted due to any fraudulent misrepresentation made by the Petitioner relating to his entitlement of higher pay scale.

3. It is not the case of the State Respondents that the Petitioner had any role in the process of erroneous pay fixation and as a result, he enjoyed higher scale of pay though he was not otherwise entitled to. Thus, this Court holds that if the Petitioner was not responsible for such erroneous pay fixation then the recovery of the excess payment made to him during the tenure of his service from his retiral dues, is not permissible. As such deduction of such excess payment from the retiral dues of the Petitioner on the face of it, is illegal. The learned advocate, appearing for the State Respondents, tried his best to justify the action of the State Respondents in this regard. She submits that the dispute which is involved in the writ petition cannot be decided by applying the principle which was laid down by the Hon"ble Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, as in the instant case recovery of the excess payment was made by this State Respondents before the retirement of the Petitioner. She, thus, contended that since the excess amount was recovered from the Petitioner before his retirement, the Petitioner cannot complain against such recovery.

4. Fact remains that the pension payment order, in the instant case, was issued on 10th November, 2003. The Petitioner retired from his service on 30th November, 2003. The overdrawal in pay to the extent of Rs. 53,810/- was adjusted against death-cum-retiring gratuity payable to the Petitioner on his retirement. Thus, this Court finds that such adjustment was made from the retiral dues of the Petitioner. The Petitioner was never informed anything about the reasons for which such deduction was made from his retiral dues, before issuance of the pension payment order. The pension payment order was issued immediately before his retirement. The State authorities in their affidavit, for the first time, disclosed that the Head Master of the said school recast the pay

structure of the Petitioner and calculated the overdrawal amount of the Petitioner and accordingly the pension papers were resubmitted by him by showing the excess payment which was received by the Petitioner during the tenure of his service. The School Authority has not used any affidavit in connection with this writ petition. As such this Court is unable to ascertain as to whether the Petitioner was at all given any opportunity of hearing even by the School Authority before recasting of pay structure of the Petitioner. The State Respondents have not disclosed in their affidavit as to whether the Petitioner was given any opportunity of hearing before his pay structure was recast by the School Authority. In the above context, this Court can safely hold that the Petitioner was not given any opportunity of hearing before his pay structure was recast by the School Authority. It is settled law that whenever the pecuniary benefit is sought to be curtailed by the employer, it is the bounden duty on the part of the employer to give an opportunity of hearing to the employee who will be affected by such curtailment of the pecuniary benefit. Since the reason for which the pay structure of the Petitioner was recast, was never disclosed to the Petitioner and further since such recasting of pay scale of the Petitioner was made without giving him any opportunity of hearing, this Court holds that the Respondents acted mala fide in recasting the pay structure of the Petitioner and also by adjusting the overdrawal amount in pay from the retiral benefits of the Petitioner.

5. That apart, though it is true that such pension payment order was issued immediately 20 days before the retirement of the Petitioner and the adjustment of the overdrawal in pay was also shown in the said pension payment order but fact remains that such realization was made by the Respondents from the retiral dues of the Petitioner though nothing has been shown before this Court that the Petitioner was, in any way, responsible for the alleged erroneous re-fixation of the pay scale. Thus, this Court holds that the State Respondents were not justified in deducting the sum of Rs. 53,810/- from the retiral dues of the Petitioner on account of overdrawal in pay. Even no useful purpose will now be served by remanding this matter to the concerned authority for reconsideration of the issue relating to overdrawal in pay by the Petitioner and the consequence thereof by following the principle of natural justice, afresh, as even if, the ultimate decision goes against the Petitioner, even after following the principle of natural justice, still then because of the Petitioner's retirement, the overdrawn amount, if there by any, cannot now be realised from the retiral dues of the Petitioner in view of the following judgments of this Hon"ble Court.:

(I) in the case of *The State of West Bengal and Ors. v. Sri Harekrishna Sardar and Anr.*, reported in 2009(2) CLJ (Cal) 259;

(II) in the case of *Kalyan Kumar Chattopadhyay v. The State of West Bengal and Ors.*, reported in (2006)1 WBLR (Cal) 591.

6. Thus, this Court disposes of this writ petition by directing the State Respondents to refund the said sum of Rs. 53,810/- to the Petitioner positively

within a period of eight weeks from the date of communication of this order.

7. Since there was enormous delay in moving this writ petition before this Court and the reasons for such delay has not been explained, this Court refuses to allow the Petitioner's prayer regarding grant of interest over the aforesaid amount of Rs. 53,810/- to be refunded to the Petitioner by the State Respondent for the reason, as aforesaid.

8. The writ petition is, thus, allowed.

9. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.