(2012) 08 CAL CK 0096

In the Calcutta High Court

Case No : Writ Petition No. 3112 (W) of 2010

Amulya Charan Maity APPELLANT

Vs

The State of West Bengal and Others RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Citation : (2012) 08 CAL CK 0096

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Ramdulal Manna, for the Appellant;Suman Sengupta for the State, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under art. 226 dated February 10, 2010 is seeking a mandamus commanding the respondents to pay him with interest Rs. 55,620 deducted from his gratuity and pension arrears towards recovery of overpaid salary and allowances. The petitioner was a primary school teacher. According to the provisions of the ROPA Rules that he had opted in to, he was to retire from services on reaching the age of 60. Hence he was to retire on November 30, 1994. He was, however, kept in employment till June 30, 1996. Salary, etc. paid for December 1, 1994-June 30, 1996 were deducted from the retirement benefits.

2. The respondents have filed Affidavit-in-Opposition that salary and allowances paid for December 1, 1994-June 30, 1996 were recovered from the petitioner''s retirement benefits on the grounds that he was not entitled to remain in employment after November 30, 1994.

3. Mr. Maity appearing for the petitioner has submitted that since the respondents took the petitioner''s services, salary and allowances he was paid for the period in question could not be recovered on the grounds of overpayment.

4. Mr. Sengupta appearing for the State has argued that the petitioner was not entitled to the benefits of the 1990 RORA Rules and also employment beyond the

age of 60, and that, in any case, his own declaration entitled the respondents to recover the overpaid salary, etc. from his retirement benefits.

5. It is not the case that though the petitioner was superannuated on November 30, 1994, he forcibly continued to attend the school and discharge duty as a teacher. Nor is it the case that the respondents took his services and paid him salary and allowances month by month because of fraud exercised by him. It is evident that the respondents kept the petitioner in employment because of pending Court cases.

6. Now the question is whether salary and allowances he was paid for December 1, 1994-June 30, 1996 could be recovered from his retirement benefits.

7. During the period in question the petitioner worked as a primary school teacher. He was paid salary and allowances month by month only because he discharged his duties. The respondents receiving services and paying him salary and allowances in consideration of such services were not entitled to recover the salary and allowances, when they were not in a position to return the services the petitioner had given.

8. The petitioner was kept in employment, presumably, because of interim orders passed by the Courts, and when the Courts finally disposing of the cases were not requested to pass order permitting the recovery of the salary and allowances paid to the teachers like the petitioner from their retirement benefits, in my opinion, the respondents could not recover the salary and allowances.

9. I am, therefore, of the view that the recovery was unjust, unfair and unreasonable. The principles laid down in Syed Abdul Qadir and Others Vs. State of Bihar and Others, squarely apply to the case.

10. There is no merit in the plea taken by the respondents that pursuant to the petitioner''s own declaration dated November 9, 1998 (produced with the AO) they were empowered to recover the salary and allowances paid for the period in question.

11. The petitioner was not in employment at the date the declaration was obtained. No law empowered the respondents to obtain the declaration that was evidently obtained withholding his retirement benefits. It was done out of malice prepense For these reasons, I allow the WP and direct the State to pay the petitioner the recovered amount with 7% p.a. interest from the date of the pension payment order, within six weeks from the date this order is served. No costs. Certified xerox.