

(2022) 07 CAL CK 0118

In the Calcutta High Court

Case No : MAT No. 1352 Of 2021, CAN 1 Of 2021

Anuradha Mitra (Nee Sen)

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Citation : (2022) 07 CAL CK 0118

Hon'ble Judges : Harish Tandon, J; Rabindranath Samanta, J

Bench : Division Bench

Advocate : Arjun Roy Mukherjee, Debapriya Mitra, Chaitali Bhattacharyya, Subhendu Roy Choudhury, N.K. Ghosh

Final Decision : Disposed Of

Judgement

Rabindranath Samanta, J

1. Challenge in this appeal is against the order dated 25th November, 2021 passed by a learned Single Bench in WPA 9172 of 2009 whereby and whereunder the writ petition was disposed of directing the respondent No.4, the Director of Public Instruction, Government of West Bengal to consider and dispose of the application for voluntary retirement of the appellant by a reasoned order.

2. The appellant in the writ petition, inter alia, sought for the following reliefs:

i) A writ in the nature of Mandamus commanding the respondent No. 5, the University of Calcutta to act through its appropriate authorities as required for them under Orders 68,69,70 and 64 of the Calcutta University First Ordinance 1979, forthwith on the basis of the fact disclosed in the letters dated 11.08.2008 and 11.01.2009 being Annexures- "P/11" and "P/12" to the foregoing petition.

ii) A writ or order in the nature of Mandamus commanding the respondents and particularly respondent No. 2 to forthwith restore the name of the petitioner in the Rolls of Teachers and payment of all her upto date salaries including those withheld from September, 2007.

iii) Alternatively, a writ or order or direction in the nature of Mandamus/certiorari/ any other appropriate order directing respondents to take all necessary steps for granting voluntary retirement to the petitioner prospectively and in due fulfilment of all necessary statutory regulations and ensure payment of retirement benefits including her pension.

3. The operative part of the order of the learned Single Bench by which the writ petition was disposed of may be reproduced as under:

“ Since a substantial length of time has passed from the impugned action which is 28th March, 2008 and the petitioner will reach her age of retirement in July 2024, this Court deems it fit to direct the respondent no. 4, being the Director of Public Instruction, to consider the application forwarded by the College on 20th July, 2006 and pass a reasoned order directing the release of all admissible dues to the petitioner. The concerned authorities shall also determine the relevant duration of the petitioner’s service. The Director of Public Instruction shall call for all required requisite information for arriving at the decision from the College within a period of two weeks from the date of communication of this order. The College shall furnish the information within three weeks from the date on which the Director of Public Instruction calls for the information. The petitioner shall render all assistance in this regard if required to do so. The reasoned order shall be taken by the Director of Public Instruction within seven weeks from the date of this order and a copy of the decision shall be made available to the petitioner within a week thereafter. It is made clear that once the admissible dues of the petitioner are ascertained, the Director of Public Instruction shall release the dues of the petitioner without any further delay.”

4. The background facts which led the filing of the writ petition may be summarised as under:

5. The appellant was appointed as a Laboratory Assistant in Jogmaya Devi College, the respondent No.2 herein, on 3rd January, 1983. The post held by the appellant as Laboratory Assistant was converted to a teaching post pursuant to an Order of this Court and affirmed by the Hon’ble Supreme Court in 1987. The appellant complains that the principal of the college, out of personal malice and ill will started harassing her by various means. The principal wrongfully and maliciously withheld her salary from August, 2005. But at the intervention of the Director, Public Instruction, the salary withheld by the principal was released in November, 2005. Again her salary was withheld by the principal since the month of November, 2005, but again at the intervention of the Director of Public Instruction, her salary was released in the month of March, 2006.

6. Out of severe frustration and her suffering from various ailments, the appellant by a letter dated 12th July, 2006 addressed to the Administrator of Jogmaya Devi College sought for voluntary retirement from service with attendant pensionary and other retirement benefits. The appellant submits that though she put an application for voluntary retirement seeking pensionary

benefits, the application was not formal in nature for voluntary retirement since she at that time did not complete 25 years of qualifying service to get pensionary benefits. The petitioner completed 25 years of service on 2nd January, 2008. The appellant alleges that though she made the application on 12th July, 2006, the governing body of the college all of a sudden by a resolution dated 4th August, 2007 accepted her application for voluntary retirement. As a consequence thereof the college authority stopped her salary from the month of September, 2007 without assigning any reason and passing any formal order. The appellant submits that the decision of the governing body was never informed to her. She came to know from the college notice book on 20.03.2008 that her application for voluntary retirement had been accepted by the governing body in its meeting held on 4th August, 2007. She also came to know that her voluntary retirement was given effect to since 20th March, 2008 and her name was struck off the Attendance Roll in March, 2008 on accepting her application for voluntary retirement. The appellant states that she was never informed by the concerned authority as to acceptance of her informal application of voluntary retirement by the governing body of the college. Under the aforesaid facts and circumstances the appellant sought for the reliefs as above.

7. Learned lawyer for the appellant has argued that though the learned Single Judge has rightly observed that the actions on the part of the college authority do not reflect fair practices, but the learned Single Judge erred in not recording any observation that the appellant was unlawfully prevented from discharging her duties by the college authorities and her salaries were withheld illegally with effect from September, 2007. According to learned lawyer the learned Single Bench ought to have directed the college authority to allow the appellant to discharge her duties and release all her arrear salary and other benefits admissible to her since September, 2007. In support of his contention learned lawyer has cited a catena of decisions in the case of Raghubir Singh -Vs- General Manager, Haryana Roadways, Hissar reported in (2014) 10 SCC 301, in the case of Pawan Kumar Agarwala -Vs- General Manager-II and Appointing Authority, State Bank of India & Ors reported in (2015) 15 SCC 184 and in the case of Somesh Tiwari -Vs- Union of India & Ors reported in (2009) 2 SCC 592.

8. Before advertng to the submission advanced by learned lawyer for the appellant, it will be apposite to refer to the application for voluntary retirement dated 12th July, 2006 put in by the appellant before the Administrator, Jogmaya Devi College. The letter reads as under:

" To

The Administrator

Jogmaya Devi College

Kolkata

Madam,

Re: Application for Voluntary Retirement

I am a member of the Teaching Staff of Jogmaya Devi College, appointed as Graduate Laboratory Instructor in 1983 in permanent capacity and completed 23 years of service.

I am a chronic and acute asthma patient since long. At times of aggravation of my asthma, it becomes impossible for me to attend my duties over the years, I have also been afflicted with other serious and chronic ailments as Hypertension, Diabetes, thyroid & high cholesterol. For each of these ailments, I am on continuous daily medication. The Consultant doctors have recommended complete rest with tension free regulated life in order to prevent further deterioration.

In view of the above, it will not be possible for me to continue in service in an effective and regular manner. I hereby submit an application for grant of voluntary retirement from service with attendant pensionary and other retirement benefit. This may kindly be forwarded to the DPI with due recommendation.

Thanking you,

Enclosure, Medical Certificate.

Dated, the July 12, 2006.

Yours faithfully,

(Anuradha Mitra)

GLI/Geography Department"

9. Admittedly, the college authority forwarded the said application for voluntary retirement to the Director of Public Instruction on 20th July, 2006.

10. Learned Lawyer appearing for the respondent No.4, the Director of Public Instruction has submitted that the application for voluntary retirement of the appellant could not be processed since the governing body of the college neither accepted the application for voluntary retirement nor made any recommendation in that regard.

11. As observed by the learned Single Bench, it appears that the application for voluntary retirement was made on 12th July, 2006 and it was considered by the governing body on 4th August, 2007 and it was given effect to with effect from 20th March, 2008. It is astonishing to note that though the proposal by the governing body on acceptance of the application for voluntary retirement has not yet been approved by the Director of Public Instruction, the college authority without making any further communication with the Director of Public Instruction or without taking any instruction or direction from it stopped the salary of the appellant with effect from September, 2007 and struck off her name off the attendance roll with effect from 20th March, 2008. Such actions on the part of

the college authority are contrary to fair play.

12. Learned Single Bench by the order as impugned directed the Director of Public Instruction to dispose of the application dated 12th July, 2006 by a reasoned order after considering all the relevant papers to be furnished by the college authority to it.

13. In the decision in the case of Raghubir Singh –Vs- General Manager, Haryana Roadways, Hissar reported in (2014) 10 SCC 301 the Hon'ble Apex Court has held that an employee is entitled to receive back wages and all consequential reliefs if the termination is bad and in the decision in the case of Pawan Kumar Agarwala –Vs- General Manager-II and Appointing Authority, State Bank of India & Ors reported in (2015) 15 SCC 184 the Hon'ble Apex Court has held that a litigant cannot be blamed or penalised for illegal termination and consequently pendency of court case and denial of full back wages amounts to grave injustice . In the other decision in the case of Somesh Tiwari –Vs- Union of India & Ors reported in (2009) 2 SCC 592 the Hon'ble Apex Court has held where ex- facie injustice has been meted out to an employee Court should direct authority to extend all benefits which he would have obtained had he not been illegally deprived of them and an authority cannot take advantage of his own wrong. Principle of no work no pay does not apply here.

14. The application of voluntary retirement dated 12th July, 2006 demonstrates that due to her suffering from serious ailments the appellant informed the college authority that it would not be possible for her to continue in service in an effective and regular manner and as such she submitted the application for voluntary retirement with a request that she be given pensionary and other retirement benefits.

15. As we discern, since the bone of contention centres round the aforesaid application dated 12th July, 2006 seeking voluntary retirement, the application which is now pending before the Director of Public Instruction needs to be disposed of in accordance with law and following the principles of natural justice. We think that pending such application it will not be wise to pass any other order or direction at this stage. That being the factual scenario, the decisions cited by learned lawyer appearing for the appellant do not apply to the matter on hand.

16. In view of the above, we do not find any infirmity or illegality in the order passed by the learned Single Bench and the order does not warrant any interference by this Court.

17. In the result, the appeal merits dismissal and the appeal is dismissed accordingly.

18. The respondent No.4, Director of Public Instruction shall dispose of the application for voluntary retirement by a reasoned order within seven weeks from date in compliance with the directions of the learned Single Judge as excerpted above and a copy of the decision shall be made available to the

appellant within a week thereafter. The respondent No. 4 shall follow the other directions of the learned Single Judge as to release of the monetary benefits to the appellant which are admissible to her.

19. With the aforesaid direction the appeal and the connected application being CAN 1 of 2021 stand disposed of. No order as to costs.

20. Urgent certified website copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree,