
(2012) 06 CAL CK 0025
In the Calcutta High Court
Case No : Writ Petition No. 6977 (W) of 2010

Asesh Kumar Maiti

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 06 CAL CK 0025

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Mukteswar Maity, for the Appellant; Benezir Ahmed and Mr. Chanchal Kumar Mitra for the State, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under art.226 dated April 5, 2010 is questioning recovery of Rs. 78,502 from his retirement benefits. The petitioner was a secondary school teacher. On reaching the age of superannuation he retired from service on February 28, 2001. The respondents were under an obligation to pay him retirement benefits on March 1, 2001. The pension payment order was issued on March 23, 2002 granting him pension with effect from March 1, 2001, but showing recovery of Rs. 78,502 overpaid salary and allowances.

2. Nothing was stated in the PPO how, why and when the overpayment in question had taken place. The aggrieved petitioner submitted a representation. The respondents did not give any attention to his grievances. He filed this WP that was admitted by an order dated April 8, 2010.

3. The order dated April 8, 2010 was passed in presence of advocates for the State. By the order the respondents were directed to file affidavit-in-opposition within five weeks from that date. They have chosen not to file any AO. Their advocates submit that the recovery was effected with the petitioner's consent.

4. How, why and when the overpayment had taken place has remained unknown.

It is not the case that the petitioner's pay had been wrongly fixed because of any misrepresentation on his part or fraud exercised by him. His pay had been fixed from time to time by the institute and the District Inspector of Schools was to approve the fixations. It is not the case that the fixations during the term of his employment had not been approved. It seems that only at the time of processing his pension case the office of the Director of Pension, Provident Fund & Group Insurance reopened the pay fixation issue.

5. In view of the decision of the Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, , the respondents could not recover any amount from the petitioner's retirement benefits, even if there was a wrong pay fixation. The recovery is unjust and unfair. It was effected arbitrarily. The petitioner is entitled to refund with interest. The fixations effected during term of employment could not be reopened at the time of processing the pension case. For these reasons, I dispose of the WP ordering as follows. The State shall refund the recovered amount, recalculate the retirement benefits on the basis of last pay drawn, pay balance retirement benefits, pension arrears, etc. On all payable amount it shall pay interest at the rate of 7% p.a. from March 1, 2001 till the date of actual payment. Compliance within four weeks from the date this order is served. No costs. Certified xerox.