

(2005) 01 CAL CK 0052
In the Calcutta High Court
Case No : Writ Petition No. 8380 (W) of 2001

Bidhu Bhusan Chandra

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-01-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 256

Citation : (2006) 1 CALLT 591 : 110 CWN 408 : (2005) 1 ILR (Cal) 128

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Udayan Chakraborty and Sanjukta Bhattacharya, for the Appellant; Pabitra Kumar Basu, Jagabandhu Ray and Ranjit Kumar Ghosal for O.C. Bhagwanpur, P.S., for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—By this application the petitioner being the retired Headmaster of Anandapur Higher Secondary School (hereinafter referred to as the said School) has prayed for compensation for loss and damages suffered by him because of fighting and/or initiating litigations in this Hon'ble Court and for illegal and mala fide action and persistent and flagrant violations of the orders of this Hon'ble Court, and for release of a sum of Rs. 24,417/- on account of gratuity, commuted amount of pension and for release of the backlog salaries lying outstanding in piecement in accordance with the order and/or memo dated 12th November, 1980 of West Bengal Board of Higher Secondary Education (hereinafter in short Board) the Memo No. 1239/S dated 24th January, 1981, the petitioner has subsequently filed a supplementary affidavit summarized his claim as follows:

- a) Salary for 42 days in 1968 : Rs. 1693
- b) Salary for the period commencing from 15th January, 1970 -31st March, 1970 : Rs. 2396.47p.
- c) Salary for the period of leave for MA Examination and for School duties

including difference of pay as per revision of payscale by the Government : Rs. 7933.45p.

d) Special pay and rural allowance for the period of 3rd June, 1973 31st December, 1975 after deducting the amount of payment already made. Rs. 128.78p.

e) Recovery on illegal deduction amount : Rs. 1700 aggregating to Rs. 14751.70p.

f) Gratuity amount illegally and maliciously deducted from the arrears of pension : Rs. 4658.00p.

g) Gratuity illegally and maliciously deducted : Rs. 19759.00p.

h) Less compulsory P.F. amount : Rs. 3817.32p,

i) Net amount due Rs. 20599.68p.

j) Commuted amount of pension : Rs. 26850.25p.

k) Non payment of payment of Memo No. 4719/S dated August 1985 by DI of Schools ; Rs. 2739.67p.

l) Interest at the rate of 12.5 percent per annum on the total claim Rs. 1185.00p.

Total aggregate amount Rs. 1,83,441.30p.

2. The writ petitioner was a Headmaster of the said School and he was appointed as such in the said School in August, 1967. Admittedly, petitioner's staying in the said school as a Headmaster was not undisturbed nor peaceful for he had to face various administrative action both from the side of the School as well as from the Government Officials namely DI. He was dismissed from service once, thereafter he was reinstated, but he was not allowed to resume his duty rather effectively prevented from joining his duty despite order of reinstatement as such the petitioners had to come to this Court previously by filing a writ petition in the year 1983 being Civil Order No. 5588(W) of 1983 when he was in service. The said writ petition was disposed of on 14th May, 1992 by the learned single Judge. He retired from services by that time, the learned single Judge had granted full reliefs to the petitioner directing the State respondent to commanding to pay to the petitioner all his arrear dues all salaries and allowances from 2nd September, 1980 till the date of his retirement, August 1985 along with other arrears, if any.

3. However this Judgment and order of the learned single Judge the State Government preferred an appeal against the aforesaid order dated 14th May, 1992, the said appeal was dismissed and the Judgment and order of Justice Kabir was upheld.

4. It appears that the said direction and order of Justice Kabir was not carried out was a contempt application was filed ultimately contempt application was

disposed of by his Lordship observing that substantial portion of his Lordship Direction was carried out as such contempt application was disposed of without proceeding further. However, his Lordship was pleased to observe that a sum of Rs. 500 and odd was remaining due to be released. The District Inspector of School (in short DI) was asked to look into the matter and to consider his claim. It was observed by his Lordship while disposing of the writ petition amongst others that on account of the petitioner being forcibly prevented from discharging his duties as Headmaster of the said School in question, the petitioner must be treated to be on duty for the entire period during which he was prevented from joining his duties and he is entitled to all salaries, allowances from 2nd September, 1980 till the date of retirement in the month of August, 1985 in accordance with the rules alongwith other arrears pending. After disposed of the aforesaid contempt application the present writ petition has been filed on or about 25th of May, 2001.

5. The aforesaid reliefs claimed herein mostly related to his alleged sufferings from hardships faced during the period when he filed writ petition or contested the writ petition. He was subjected to mental torture, pressure and to face financial hardship as result whereof he lost his wife and one of his nearest kin. His further claim related to the gratuity and also pensionary benefit.

6. Mr. Udayan Chakraborty appearing for the petitioner contends that the respondents and each of them deliberately violated orders of this Hon''ble Court as well as the orders of the higher authority of the Education department, and the Board. The State Government Official particularly I concerned in misuse and/or abuse of his power acted in such manner that utterly infringes the petitioner's right under Article 21 of the Constitution of India. He urges that the petitioner had to fight and he is still fighting perennial legal battle which started in the year 1977. During the long last 26 years his family has practically been ruined. He had to face and withstand conjoint atrocities of the members of the managing committee, DI of the Schools and also some members of the ruling political party in connivance with Education Minister. In spite of the orders of this Hon''ble Court and of the highest authorities of the Education Department, the petitioner was not allowed to join school to perform his duties as Headmaster and ultimately had to retire under the order of this Court. Thereby he suffered mental agony. He also suffered immensely owing to withholding of retrial benefit intentionally for a long time. As a result whereof he could not maintain member of his family and ultimately his wife died prematurely without treatment. His landed property near his residence in Midnapore has been forcibly taken away at the instigation of some members of the Managing Committee of the School by the local hooligans at a throwaway price under threat and at point of revolver. He contends that there has been violation of fundamental right of the petitioner as his livelihood had been taken away in utter breach of Article 21 of the Constitution of India by the respondents. In support of his contention he has relied on decision reported in Common Cause A Registered Society Vs. Union of India and others, .

7. He submits in the public law field particularly in writ jurisdiction High Co it can award compensation in case of infringement of fundamental right. He has drawn support for this proposition of the Supreme Court Judgment reported in Lucknow Development Authority Vs. M.K. Gupta, The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, and Rabindra Nath Ghosal Vs. University of Calcutta and Others, .

8. Mr. Pabitra Basu learned Counsel appearing for the State while opposing this writ petition contends that petitioner's claims and contention mostly have been conclusively decided by the earlier writ petition being C.O. 5588 (W) of 1983 by order dated 14th May, 1992 passed by Justice Kabir and affirmed by the Hon''ble Division Bench by an order dated 10th October, 1996 passed in the aforesaid appeal therefore, all claims regarding his arrears of salaries and other dues prior to his retirement are no longer res Integra. He submits further that both the contempt application and of the claims complained of upon his retirement has been settled in writing in which the petitioner has signed.

9. This settlement has been suppressed by the petitioner in which it has been recorded specifically that petitioner has abandoned claim of interest at the rate of 12.5 percent, he has been paid substantial amount on account of arrears of salaries. The petitioner's claim ad contention on account of Gratuity is not permissible in view of the fact that the petitioner for the first five years after his appointment as Headmaster drew increment though at that point of time he did not have five years teaching experience as Headmaster,

10. He submits that under the relevant rule prevailing at that point of time the Headmaster who did not have any teaching experience is not entitled to my increment. When this illegal drawal of increment amount was detected the same was deducted from and out of his gratuity amount. The other claim of the petitioner has duly been paid, the amount of pension has also been settled.

11. Mr. Basu submits in relation to other claim and contention of compensation for damages made by the petitioner are not at all maintainable as the concerned officers who are allegedly responsible for alleged sufferings have not been made parties as personal allegations have been made against them in the writ petition. As such these allegations cannot be entertained nor be determined by this Hon''ble Court. He submits that the basis of his claim for loss and sufferings to which the petitioner allegedly subjected, related to flagrant violations of series of orders of this Hon''ble Court by the various persons. Violation of the Court's order or Board's order if there be any should be treated as an independent cause of action of the Board and as against those erring officers in this case, the Board's officers have not impleaded as party respondent though the petitioner in almost all the paragraphs of the writ petition relied upon and referred to Board's order. In any event the West Bengal Board of Higher Secondary Education Act, 1973 enjoining the Board with ample power enabling it to enforce its orders. Board has not come with complaint for violation of its order in this Hon''ble Court.

12. The allegations that the petitioner was subjected to inhuman sufferings, loss and hardship and mental injury, relate to question of fact, which are required to be proved by evidence. In support of his submission he has relied on a decision of the Supreme Court reported in AIR 1961 SC 1974 Bokaro and Ramgur Ltd. Vs. The State of Bihar and Another, : Sohanlal Vs. The Union of India (UOI), Ramsaran Das and Bros. Vs. Commercial Tax Officer, Calcutta and Others, .

13. He also contends that the power of the High Court, under Article 226 is not available for vindicating sentimental injury. He has referred in this connection to a decision of Allahabad High Court reported in Sri Durga Gita Vidyalaya Association Vs. State of U.P. and Others, .

14. The submits further that in his earlier writ petition this claim has not been made. Therefore, he says that this claim is barred by the principle of res judicata. He has relied on two Judgment of the Supreme Court reported in P.K. Vijayan Vs. Kamalakshi Amma and Others, and Govt. of Andhra Pradesh Vs. M. Narasimha Murthy, . Therefore, according to him the writ petition is liable to be dismissed.

15. I have heard the learned Counsels for the parties and I have gone through the papers and documents placed before me. I find the petitioner has raised basically following demands:

- a. His arrears salary during the period when he was prevented from working in the School as Headmaster on various grounds.
- b. Amount of Gratuity deducted by the respondents on account of over drawal of the amount of increment.
- c. Commuted pension and the payment of interest there in at the 12.5 percent annum.
- d. Damages on account of his sufferings because of illegal and arbitrary action for which the petitioner had to fight in past.

16. While examining his claim for arrears of salaries and other amount during his service period I am of the view that Mr. Basu is right in his statement that in view of the order passed by Justice Kabir (as His Lordship then was) dated 20th November, 1998 in the contempt application being C.O. 5588(W) of 1993, no further order can be passed on this writ petition. I appropriate quote his Lordship's language in the aforesaid order as follows:

Although substantial amount of the dues of the petitioner had been paid to him there is still some dispute with regard to a sum of Rs. 5,356. which the petitioner claims is still in issue and payable to him. Since order on which contempt application has arisen, has been substantially complied with, nor further purpose will be served in continuing with the contempt proceedings and the same are, accordingly, dropped. However, District Inspector of School, (SE) Midnapore is directed to look into the petitioner's grievance regarding petitioner's claim in

respect of the aforesaid sum after giving the petitioner an opportunity of hearing.

17. The aforesaid contempt application had arisen in connection with the order dated 14th May, 1992 passed by Justice Kabir since affirmed by the Appeal Court in respect of the earlier writ petition filed by the petitioner. It appears to me that earlier writ petition disposed of the disputes relating to the claim of the petitioner of arrears of salaries and other dues during his service period. His Lordship was pleased to allow the writ petition and observe that the petitioner must be treated to be on duty for the entire period during which he was prevented from joining his duties and that he is entitled to all salaries and allowances from 2nd September, 1980, till the date of his retirement in the month of August 1985, in accordance with rules along with other arrears if any. Accordingly appropriate direction was given as stated above.

18. Therefore it is clear that all the claims of the petitioner including those which are claimed herein were adjudicated and/or decided by the Court and in the order passed on the contempt application it has been recorded specifically that substantial amount has been paid to him.

19. Thus I am unable to accept the submission of Mr. Chakraborty the arrear claim of the petitioner on account of salary and other allowances during his service period is still to be decided. The issue has now been set at rest by the two orders of Justice Kabir. Mr. Basu has rightly argued that this claim and issues need not and cannot be decided by the Court in view of the principle of res judicata and/or constructive res judicata. It is the settled position of the law that the principle of res judicata either constructive or expressed are squarely applicable in writ jurisdiction. For this proposition he has appropriately drawn my attention to the two decisions of the Supreme Court reported in P.K. Vijayan Vs. Kamalakshi Amma and Others, and Govt. of Andhra Pradesh Vs. M. Narasimha Murthy, .

20. I find in the above contempt application Justice Kabir passed an order on 5th September, 1997 whereby his Lordship has been pleased to direct the DI (SE) Midnapore to call for meeting of the school authorities and also the petitioner and try to arrive at an amicable settlement as to what was finally due to the petitioner on account of arrears of salaries and thereafter to make payment of the same. Pursuant to this order it appears that a meeting was held and there has been amicable settlement in writing in which the petitioner subscribed his signature. Significantly agreement signed by the petitioner has not been disclosed in the writ petition nor there has been any challenge as to legality and validity of this agreement. From the agreement I find the petitioner's all the dues have been settled. He had agreed to accept the pensionary benefit. It has been recorded thereby that substantial amount has been paid to him, In this agreement he has voluntarily given up his claim for inter at the rate of 12.5 per annum on his arrears of dues. Even he has agreed to accept pensionary benefit in lieu of compulsory provident fund cum gratuity. Admittedly pension has been released. In view of the agreement it is difficult for this Court to grant any relief

on account of arrears of salaries or otherwise out side the agreement.

21. Pursuant to the order of Justice Kabir referred to in the contempt petition the DI has gone into the matter and further sum of Rs. 5,000 and odd has been paid to the petitioner. I am of the view therefore, the petitioner cannot have any claim whatsoever with regard to the arrears of salaries and other allowances and dues.

22. As far his claim for damages is concerned on account of suffering of hardships and mental agony while lighting the litigation I think this claim cannot be entertained by the Writ Court. Government Officials are deemed to have acted bonafide under the law as nowhere it has been held by the Court let their act and action are without jurisdiction and malicious. Question of infringement of fundamental right of the petitioner or deprivation of his life and livelihood does not arise. Consequently question of suffering damages does not and cannot arise. He filed writ petition challenging the action of the Government and he succeeded, and Court granted relief but the Court did not pass any order for payment of costs for compensatory cost, if the Court has omitted, it shall be deemed to have been refused. But the petitioner got the costs pursuant to agreement as quoted above. In the agreement no where he has claimed that compensation shall be paid because of suffering damages. It is true sadly the petitioner during this crisis period has lost his wife and one of his nearest kin, but death occurs at the time when it is due to particular person in natural course. The aforesaid death was not due to inaction and/or wrongful action on the part of the State respondent. It is also equally true that the petitioner was not paid his dues during this period. But I cannot accept the contention that because of the action of the State withholding dues, the petitioner's fundamental right has been infringed so much so compensation should be awarded, particularly in the public law field, I find there is substance in the submission of Mr. Basu that the decisions of the Supreme Court rendered in Common cause case [Common Cause, A Registered Society Vs. Union of India and Others, as well as 2002 JT vol. 490 are not at all applicable in this case. The decision rendered in these cases essentially related to the admitted fact of deprivation of life and/or right to life or livelihood by the inaction and/or wrongful action on the part of the State. Inaction and/or wrongful action in those cases were direct result of cause of death. Here in my view the cause of death of his wife and nearest kin does not have proximat relation with the administrative action in the school it could have been perhaps, for which the doubt is not ruled out, had there been any loss of life of the petitioner himself. This action on the part of the petitioner is based on as rightly pointed out by Mr. Basu on sentiment and emotion. Sentiment and emotion however touching and appealing, has no place in the Court of law, in this connection Judgment of Allahabad High Court, reported in Sri Durga Gita Vidyalaya Association Vs. State of U.P. and Others, is very apposite. Besides the petitioner suffered alleged damages long time back, he could have brought action within the period as prescribed by the law of limitation, it was not done. Therefore, I do not find any substance in this claim.

23. As far as the petitioner's claim for gratuity which has been deducted admittedly by the Government, is concerned I think that this claim has been wrongfully deducted by the State Government. Pursuant to order of Justice Barin Ghosh (as his Lordship then was) the Director of Provident Fund, Government of West Bengal has submitted a report, from the report I find so also stand taken in the affidavit in opposition of the Government the amount of gratuity was deducted because the petitioner is alleged to have overdrawn his salary during his service period. It is alleged that the petitioner was lacking five years teaching experience to become Headmaster of the institution at the time of his appointment on 11th August, 1960. At that point of time, it is reported he could not enjoy pay scale of a Headmaster. In rule annexed to the report I do not find any position that a Headmaster will not get benefit of increment of salary owing to lack of teaching experience. On the other hand the petitioner has been appointed as a Headmaster without any objection as such payment of increment was approved by the then appropriate officials of the Government. Moreover, the appropriate officers of the Finance Department has also cleared the petitioner's case. This document has been annexed in answer to the aforesaid report by the petitioner in his supplementary affidavit. During long service period there has been no whisper and/or allegations against the petitioner as regard his lack of experience. In the agreement it was not mentioned that gratuity of the petitioner would not be paid. Under such circumstances I think the Government was not justified to deduct his gratuity amount. This gratuity must be paid to the petitioner and this shall be paid along with interest at the rate of 10 percent from the date when it was payable. Therefore, I direct the State respondent to pay his gratuity sum of Rs. 24,417/- on account of the unpaid gratuity together with interest @ 10% per annum to be computed from the day of expiry of one month from the date of retirement.

24. The petitioner is also entitled to costs assessed at Rs. 5,000/- to be paid by the State along with aforesaid payment. Thus the writ petition is succeeded to the above extent.

After the Judgment was pronounced, Mr. Chakraborty upon instruction from his client who is present in Court submits that his client is agreeable to accept commuted amount of pension.

After compliance of all formalities as suggested in the Affidavit-in-Opposition of the State respondent the commuted amount of pension shall be paid and be handed over to the petitioner within three months from the date of compliance.