
(2015) 09 CAL CK 0074
In the Calcutta High Court
Case No : W.P. No. 18652(W) of 2015

Chhaya Bhattacharya (Roy)	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Citation : (2015) 4 CALLT 31 : (2015) 4 ESC 2397 : (2016) 148 FLR 446 : (2016) 1 LLN 336

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Rampada Pal and Indrani Pal, for the Appellant; Jahar Lal De and Smita Das De, for the Respondent

Final Decision : Allowed

Judgement

Samapti Chatterjee, J.—The petitioner has filed the writ petition against impugned order dated 4th September, 2014 issued by the Assistant Director, Pension, Provident Fund and Group Insurance, West Bengal and the earlier letter dated 2nd March, 2013 issued by the Headmistress, Simulia Uziran Girls' High School under P.S.-Tamluk, District-Purba Medinipore and the letter dated 3rd June, 2015 issued by the District Inspector of Schools (SE) Purba Medinipore. The petitioner's case in brief is that:--

The petitioner passed the B.A. Examination under the University of Calcutta in the year, 1966 and thereafter the petitioner was appointed as an Assistant Teacher in Simulia Uziran Girls' Junior High School and joined the service on 1st August, 1966 when the school was running as Junior High School. Thereafter the petitioner's appointment was approved by the concerned District Inspector of Schools (S.E.), Purba Medinipur, on 25th September, 1968 with effect from 1st August, 1966. The petitioner initially used to enjoy the passed graduate scale since the school was a Junior High School with effect from 1st August, 1966 to 15th May, 1971. Thereafter, she was allowed to enjoy trained graduate scale of pay from 16th May, 1971 to 31st March, 1981. After obtaining permission from

the school authority the petitioner took admission in Tamralipta Mahavidyalaya for studying Special Honours in Political Science, specially for the year, 1967 to 1969 in morning session of the college without hampering or disturbing the normal course of business of the school as the school was running in day session i.e. from 11A.M. to 4P.M. and thereafter the petitioner passed Honours Examination in the year, 1969. The petitioner also passed B.Ed. Examination from the University of Calcutta in the year, 1970.

2. Mr. Pal, learned Counsel appearing for the petitioner, submits that in the Junior High School Honours or post graduate scale of pay was not granted before the publication of G.O. being No. 372-Edn.(B) dated 31st July, 1981. In the year, 1981, the petitioner exercised her option on 18th March, 1981 for granting the benefit of G.O. dated 31st July, 1981 in the revised pay scale of Rs. 500-1360/- with effect from 01.04.1981 as trained Honours graduate candidate as per ROPA, 1981. Accordingly, from 1981 the petitioner was allowed to enjoy the trained Honours graduate scale of pay of Rs. 500-1360/- with effect from 01.04.1981 and the petitioner's pay was fixed by Rs. 500/- from 1st April, 1981. Thereafter again by the Memorandum No. 136Edn. (P) dated 15th May, 1985 the petitioner exercised option as per paragraph 3(b) of the said Memorandum dated 28th December, 1985 for pension including family pension-cum-gratuity which was counter-signed by the headmistress of the said school. Even under ROPA 1990 the petitioner exercised her option on 4th June, 1990 and her pay scale was revised from Rs. 1640-3635/-.

3. Mr. Pal, learned Counsel for the petitioner, further submitted that the petitioner was drawing the pay scale of Rs. 5500-11325/- and her basic pay was fixed at Rs. 8325/- as on 1st April, 1996 which would be evident from the service book. Thereafter in the year, 2005 the said school was upgraded by the West Bengal Board of Secondary Education upto Class-X High School with effect from 1st May, 2005 and by Memorandum dated 23rd March, 2006 the District Inspector of Schools(S.E.), Purba Medinipur, granted approval of the appointment of the teaching and non-teaching staff of the newly recognized High School but the qualification of the petitioner was shown as BA, B.Ed though the actual qualification of the petitioner was B.A.(Hons.), B.Ed. Accordingly, the District Inspector of Schools (S.E.), Purba Medinipur, by its Memorandum dated 31st July, 2007 rectified the error of the qualification of the petitioner and corrected the qualification of the petitioner by writing that it would be B.A.(Hons.), B.Ed, instead of B.A., B.Ed. which is revealed from Annexure "P-13" to the writ petition. The petitioner repeatedly made representation before the school authority to prepare her service book as she was going to be retired on 30th June, 2007. But the school authority failed to prepare the petitioner's service book and only on 17th May, 2007 the school authority submitted the service book of the petitioner. Only on 17th September, 2007 after the petitioner was superannuated from the service, the service book was submitted to the concerned District Inspector of Schools (S.E.), Purba Medinipur, wherefrom it revealed that last pay drawn by the petitioner was Rs. 5500-11325/- and the

petitioner drawn last basic pay of Rs. 11075/- and her pension should be fixed at the rate of Rs. 5537/-. The petitioner made representation on 19th December, 2011 in terms of the Memorandum dated 15th July, 2011 for grant of ad hoc pension. Accordingly, District Inspector of Schools(S.E.), Purba Medinipur, by its Memorandum dated 24th April, 2012 sanctioned ad hoc pension stating that the rate of pension should be fixed of Rs. 5537/- on the basis of the last pay of the sum of Rs. 11075/- but that ad hoc pension was not released in favour of the petitioner, instead of ad hoc pension which has been sanctioned in favour of the petitioner, the petitioner was granted provisional pension in pass graduate scale fixed in her favour vide letter dated 22nd May, 2013 issued by the District Inspector of Schools(S.E.), Purba Medinipur. Under the compelling circumstances the petitioner accepted the provisional pension with protest/objection that though the petitioner is entitled to get pension at the rate of Rs. 5537/- as per her Honours scale of pay but the same was granted as per passed graduate scale.

4. Mr. Pal, also submitted that by Memo No. 409-S/Pen (1) dated 13.06.2008 the District Inspector of School (SE), Purban Medinipur, intimated the school authority, with a copy to the petitioner stating inter alia that (1) petitioner draw Honours scale of pay and she improved her qualification as a regular student when she was in service and drawn salary for the said period. (2) fixation on 1.4.1986 under ROPA 1990 is wrong as she has not completed 20 years service as on 1.4.1986 (3) contribution to CPF (Government share) should have started from 1.1.1979. Ultimately, on 10th March, 2014 after seven years of her superannuation the District Inspector of Schools(S.E.), Purba Medinipur, forwarded the pension paper of the petitioner to the Director of Pension, Provident Fund and Group Insurance.

5. Mr. Pal also contended that By Memo No. RM/S/00360/14 dated 4.9.2014 the Asstt. Director of Pension, provident Fund and Group Insurance, West Bengal intimated the District Inspector of Schools (SE) Purba Medinipur requesting him to review the pay on 1.8.1986 and rectify accordingly. Pay is required to be recast in the Service Book freshly. Further, the amount of over drawal which has been mentioned in input sheet is also to be deposited through treasury challan.

6. Mr. Pal further submitted that By letter dated 2.3.2015 the Headmistress of the school intimated to the petitioner to comply with the Memo dated 4.9.2014 and directed to deposit the over drawal amount through T.R. challan.

7. Mr. Pal further contended that by Memo No. 143-S/pen dated 3.6.2015 the District Inspector of Schools directed the petitioner to comply with the order of DGPG dated 4.9.2014.

8. Mr. Pal also vehemently urged that as per ROPA 2009 the basic pay of the petitioner as on 1.1.2006 including grade pay Rs. 4700/- as per scale of pay Rs. 9000-40,500/- would be Rs. 24,370/- plus D.A. relief and on the date of retirement on 30.06.07 the pay would be Rs. 25,110/- so the rate of pension would be Rs. 12,555/- plus D.A. relief as admissible under the law.

9. Mr. Pal, Learned Advocate appearing for the petitioner further contended that it is a settled principle of law laid down by the Hon''ble Supreme Court in catena of cases which has been time to time followed by the Hon''ble Division Bench as well as the learned Single Bench of this Hon''ble Court in several decisions.

10. In support of his contention, learned Advocate for the petitioner relied on the several decisions reported in Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, and Syed Abdul Qadir and Others Vs. State of Bihar and Others, . Learned Advocate for the petitioner also relied on the latest Supreme Court decision reported in State of Punjab Vs. Rafiq Masih (White Washer), Paragraph 12 at pages 19 and 20 which is quoted below:--

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payment have mistakenly been made by the employer, in excess of their entitlement. Be that it may, bases on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class IV service (or Group "C" and Group "D" service)

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery,

(iii) Recovery from employees when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. Mr. Pal also relied on the Hon''ble Division Bench decision passed on 9th September, 2013 in W.P.S.T. No. 216 of 2013 (State of West Bengal & Ors v. Asis Das Gupta). Mr. Pal further urged that the point raised by the learned Advocate for the State-respondents that the petitioner approached this Hon''ble Court after long time and therefore, the writ petition should be dismissed on the sole ground of delay for approaching before this Hon''ble Court.

12. In support of his contention Mr. Pal relied on one unreported judgment passed by the Hon''ble Division Bench in M.A.T No. 1067 of 2010 (Smt. Nanda Rani Das v. State of West Bengal & Ors.) where the Hon''ble Supreme Court decision reported in Union of India (UOI) and Others Vs. Tarsem Singh, held as follows:

"It is true that the aforesaid overdrawn amount was deducted in the year 2001 and the petitioner approached before this Court after lapse of nine years. However, on account of the aforesaid delay no third party right has accrued and it is only the petitioner who suffered due to non-payment of the aforesaid amount by the respondent authorities.

In the case of Union of India (UOI) and Others Vs. Tarsem Singh, , 648 the Hon''ble Supreme Court observed as follows:

For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others delay would render the claim scale and doctrine of laches/limitation will be applied."

13. Per Contra, Mr. Jahar Lal De Learned Senior Advocate for the State respondents contended that the petitioner is not entitled to get any relief as the petitioner was wrongly allowed by the State Authority to enjoy the said amount for which the petitioner is not entitled to.

14. Considering the submissions advanced by the learned Advocate appearing for both the parties and after perusing the records and averments and also after considering the decision of the Hon''ble Supreme Court in the case of Syed Abdul Qadir (supra), Rafiq Masih (supra) and Tarsem Singh (supra), I am of the view that the decision taken by the authority to deduct a huge amount from the petitioner's pensionary, gratuity benefit without giving an opportunity of hearing to the petitioner when the petitioner was very much in service, cannot be accepted or sustained in the eye of law.

15. In view of the decision of the Hon''ble Supreme Court in the case of Shyambabu Verma & Ors. (supra) and also in the subsequent decision in the case of Syed Abdul Qadir (supra), I hold that in the facts of the present case, recovery of excess amount cannot be allowed after retirement of the employee concerned since the said excess amount was not paid on account of any misrepresentation or fraud on the part of the petitioner.

In this case I find that the petitioner should be granted the monthly pension @ Rs. 12555/- plus D.A. relief as per her last pay drawn Rs. 25,110/- from 1.7.2007 as per ROPA 2009.

I also find that it is within the knowledge of the authority that the petitioner has been allowed B.A. (Hons), B.Ed. scale with effect from 1.4.1981 under ROPA 1981 being 372-EDN (B) dated 31.7.1981 vide memo No. 2044-S dated 11.3.1983 issued by D.I.S. (SE) Midnapore marked as Annexure-P/7 of the application read with Memo No. 2209 dated 11.12.1990 vide annexure P/11 to the application, thereafter the petitioner had been paid trained Honours graduate scale of pay by different ROPAs and accordingly her last pay was Rs. 11,075/- as on 30.06.2007 vide Annexure-P/14 to the application. So, the petitioner was

paying higher scale of pay being B.A. (Hons), B.Ed. till her retirement dated 30.6.2007. But as per ROPA 2009 her basic last pay would be Rs. 25,110/- plus D.A. relief and to be obtained by the petitioner from 1.7.2007 as per ROPA 2009. So, now the question of recovery of overdrawal Memo dated 4.9.2014 vide annexure-P/20 to the application does not arise at all.

I also find that non payment of retiral benefit and with held the same from 1.7.2007 till date is highly improper and bad in law.

I also find that pension and pensionary benefits are not a bounty but it is her legal right to enjoy the same as the petitioner has accrued her right during her service carrier. So, all retiral benefits including gratuity and pension erroneously withheld should be paid to the petitioner with interest from 1.7.2007 till actual payment for delayed payment in view of the judgment of Hon"ble Apex Court reported in D.D. Tewari Vs. Uttar Haryana Bijli Vitran Nigam Ltd., .

16. That being the position in my considered view the impugned order dated 4th September, 2014 issued by the Assistant Director, Pension, Provident Fund and Group Insurance, West Bengal and the subsequent letter dated 2nd March, 2013 issued by the Headmistress, Simulia Uziran Girls" High School, under P.S-Tamluk, District-Purba Medinipore and the letter dated 3rd June, 2015 issued by the District Inspector of Schools (SE), Purba Medinipore cannot be sustained in the eye of law.

17. Accordingly letter dated 4th September, 2014 issued by the Assistant Director, Pension and Provident Fund and Group Insurance, West Bengal and the letter dated 2nd March, 2013 issued by the Headmistress of Simulia Uziran Girls" High School and the letter dated 3rd June, 2015 issued by the District Inspector (SE), Purba Medinipore are quashed and set aside.

18. I, therefore, direct the respondent authorities particularly the Director of Pension and Provident Fund and Group Insurance West Bengal and the concerned Treasury Officer to release gratuity and pension @ Rs. 12,555/- plus D.A. relief on the basis of her last basic pay to be drawn the sum of Rs. 25,110/- in terms of ROPA 2009 with interest of both pension and gratuity @ 9percent from 1.7.2007 till actual payment after adjustment of the sum of Rs. 1,16,112/- already paid being provisional pension and also pay arrear salary and other admissible allowances as per ROPA 2009 and 40% value of commuted pension without any further delay but positively within a period of ten (10) weeks from the date of communication of this order failing which additional interest @ 2 per cent per annum shall be payable.

19. With these aforesaid directions this writ petition is allowed. There will be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.