
(2018) 01 CAL CK 0095
In the Calcutta High Court
Case No : 4039 (W) of 2015

Dr. Biswarup Saha

APPELLANT

Vs

Commissioner of School Education & Ors.

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

Citation : (2018) 01 CAL CK 0095

Hon'ble Judges : Tapabrata Chakraborty

Bench : Single Bench

Advocate : Bhabani Prasad Mondal, Sukanta Mondal

Final Decision : Dismissed

Judgement

1. Shorn of unnecessary details, the facts are that the petitioner participated in a selection process for appointment to the post of an assistant teacher responding to an advertisement published by the Chetla Boys' High School (in short, the said school) and emerged to be successful in the same and was appointed to the said post on 16.11.1985. His service was confirmed on 16.11.1987. Thereafter, he tendered his resignation from the said post on 18.09.1993 and joined the post of lecturer in Rammohan College (in short, the said college). The said school authorities did not obtain countersignature and approval of the respondent no.3 in the petitioner's last pay certificate, in the resolution accepting the petitioner's resignation and in the service book and did not hand over the said records to the petitioner and also did forward the said documents to the said college. At the time of appointment the petitioner was having a post graduate degree but he was not granted the post-graduate scale of pay. Ventilating such grievances, the petitioner submitted representations to the respondents but the same were not attended to. Aggrieved thereby, the petitioner filed a writ petition, being C.O. No.15751 (W) of 1994, which was disposed of on 19.12.1994 with a direction upon the respondent no.3 to consider the petitioner's claim. As the said order was not being complied with, the petitioner filed a contempt application. During pendency of the said application, the respondent no. 3 passed an order on

25.09.1995 observing, inter alia, that the petitioner is entitled to get the arrears of pay as per Revision of Pay and Allowances Rules, 1990 (in short, the ROPA Rules of 1990). The said order was placed in the contempt proceedings and by an order dated 11.08.2009 the contempt application was disposed of. In the said order dated 11.8.2009 the Court observed that it shall be open to the petitioner to take steps in accordance with law if benefits flowing from the order of the respondent no. 3 dated 25.09.1995 are not granted to him. On the basis of the said order, the petitioner again claimed the benefits by a representation dated 23.07.2010 and as the same was not considered, the petitioner preferred a writ petition being W.P. No. 9761 (W) of 2012. The said writ petition was disposed by an order dated 27.08.2012 directing the respondent no. 3 to confer the benefits to the petitioner as flowing from the order dated 25.09.1995 passed by the respondent no. 3 and to dispose of the petitioner's representation pertaining to supply of the relevant documents within a period of eight weeks. Pursuant to the said order, the respondent no.3 passed an order on 27.08.2013 and the arrear amount of Rs 21,302/- was disbursed in favour of the petitioner on 28.01.2014.

2. Mr. Mondal, learned advocate appearing for the petitioner submits that the petitioner has been deprived of the benefits of higher scale of pay on and from the date of his initial appointment in the said school on 16.11.1985. After a long legal battle, the respondent no.3 issued an order on 25.09.1995 allowing the arrears as per ROPA Rules of 1990. Even after issuance of the said order, the arrear claim was withheld for which the petitioner again had to approach this Court and on the basis of an order passed in the writ petition being W.P. No. 9761 (W) of 2012 on 27.08.2012, the arrear amount was, ultimately, disbursed on 28.01.2014. Thus, the delay, which has occasioned towards disbursement of the said arrear amount, is clearly attributable to the State respondents for which the petitioner is entitled to interest. The benefit to which he was automatically entitled to on the basis of his qualification could only be availed after three rounds of litigation and the dues pertaining to the period from 1985 to 1993 have been disbursed in the year 2014 and for such lackadaisical attitude of the respondents, the petitioner has been made to suffer and as such he is entitled to interest and compensation.

3. A perusal of the order dated 27.08.2013 passed by the respondent no.3 clearly reveals that the reconstructed service book, the last pay certificate and the last pay fixation of ROPA Rules of 1990 duly countersigned by the respondent no.3 have been handed over to the petitioner on 19.08.2013. As such, the grievance of the petitioner pertaining to non-supply of original documents stands redressed.

4. In the said order dated 27.08.2013, it has also been observed that the arrear claim upon conferment of post-graduate scale of pay to the petitioner was submitted by the school authorities on 05.07.2013. Immediately thereafter, the said arrear claim was transmitted to the Joint Director of Accounts (School Education), Kolkata by a memo dated 23.07.2013 and after the same was vetted

on 06.08.2013, all relevant documents were scrutinized by the respondent no.3 and the respondent no.2 was asked to allot the amount of Rs. 21,525/- in favour of the petitioner. On the basis of such prayer of the respondent no.3, the fund was placed by the respondent no.2 and the cheque was issued in favour of the petitioner on 28.01.2014. The computation of the arrear claim is not in dispute.

5. The petitioner accepted the appointment to the post Assistant Teacher in the said school in the graduate scale of pay, as would be explicit from the letter of appointment. In the writ petition being W.P. No. 9761 (W) of 2012, the petitioner inter alia prayed for implementation of the order passed by the respondent no.3 on 25.09.1995 by which the petitioner was allowed arrears as per ROPA, 1990 but the said writ petition was disposed by an order dated 27.08.2012 directing the respondent no. 3 to confer the benefits to the petitioner as flowing from the order dated 25.09.1995 passed by the respondent no. 3 but no order towards interest was passed and the petitioner accepted the said order. Pursuant to the said order, the respondent no.3 passed an order on 27.08.2013 and the arrear amount of Rs 21,302/- was disbursed in favour of the petitioner on 28.01.2014.

6. It is the responsibility of the school authority to draw up an arrear claim. From the records, it appears that such arrear claim was prepared and forwarded by the school authorities only in the year 2013. There had been a continuous dispute among the petitioner and the school authorities. The delay, if any, is attributable to the school authorities and the State cannot be saddled with the burden to pay interest to the petitioner.

7. Payment of interest is not a matter of course. Excess payment of public money which is often described as 'tax payers money' is neither of the officers nor of the recipients [see the judgment delivered in the case of Chandi Prasad Uniyal ? vs- State of Uttarakhand, reported in (2012) 8 SCC 417]. State cannot be directed to pay such public money in the form of interest when the delay in disbursement of the benefits is not attributable to it.

8. Applying the proposition of law to the facts of this case, I am of the opinion that the claim for interest and compensation is not sustainable in law. Accordingly, the writ petition is dismissed. There shall however be no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.