
(2001) 12 CAL CK 0045
In the Calcutta High Court
Case No : Writ Petition No. 9602 (W) of 1997

Gobinda Prasad Das

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2002) 2 CALLT 83

Hon'ble Judges : Pratap Kr. Ray, J

Bench : Single Bench

Advocate : Mantu Behari Maiti, for the Appellant; Amal Kr. Basu Chowdhury and Swapan Kr. Pal, for the Respondent

Final Decision : Allowed

Judgement

P.K. Ray, J.—Heard the learned advocates for the parties. In this writ application, petitioner has prayed for payment of all arrear, salaries as per Revision of Pay and Allowances Rule 1990, hereinafter referred to as the ROPA, 1990 and payments of pensionary benefits in terms of such Rule. It is the contention of the writ petitioner that on 27th June, 1990 the petitioner submitted the option in terms of G.O.33 Edn. (b), 7th March, 1990 and has opted revised scale of pay in terms of ROPA 1990. But thereafter in terms of the Interim direction of Division Bench of Calcutta High Court passed in F.M.A.T. No. 1425/90, Education Department, by Memo No. 94 Edn. (b) dated 27th April. 1992 wanted fresh option from the teaching staff of the State of West Bengal working in the Secondary and Higher Secondary Schools. In this memorandum it was pointed out that those who opted revised pay scale in terms of ROPA 1990 and thereby made undertaking to be superannuated at the age of 60 years, would be entitled to revert back to the old scale of pay with right for consideration of extension of service up to 65 years of age on year to year basis and subject to physical alertness and mental fitness. In such memorandum, further condition was Imposed that the revertee to the old scale of pay with the benefit for

consideration of extension his service up to 65 years of age, must refund the excess amount as drawn as salary in terms of revised scale of pay within certain period. The same condition was made as a condition precedent of reversion to the old scale of pay. Though the petitioner opted for reversion to the old scale of pay but petitioner did not refund the excess amount as drawn in terms of memo No. 194 Edn. (b) dated 27th April, 1992. The Education Department further issued a Government order to this effect that those who did not refund the excess amount would not be entitled to have the benefit of reversion to the old scale of pay which is reflected in the memo No. 59-SC(b), 17th April, 1995. In view of such position, it is the case of the petitioner that since no amount was refunded, there was no valid reversion of the petitioner in the old pay scale and accordingly, it is contended that the petitioner retired from the service at the age of 60 years with legal entitlement of revised scale of pay. in the resultant vacancy due to retirement of petitioner already a new Incumbent has been appointed. Despite such, the respondent concerned neither allowed the petitioner all pensionary benefits in the revised pay scale nor made any necessary payments of the arrear salaries in terms of the revised scale of pay which was due to the petitioner. On 30th June, 1997 direction for affidavit was given but despite direction no such affidavit- in -opposition has been filed by the respondents. Hence, applying the doctrine of nontraverse, contention as made in the writ petition is accepted. Reliance may be placed to the Judgment passed in the case of Controller of Court of Ward, Kolhapur and Another Vs. G.N. Ghorpade and Others, . However, in fact, learned advocate for the respondents frankly submits that the petitioner did not refund the amount as drawn in excess in the revised scale of pay which was the condition precedent for reversion of the petitioner to the old scale of pay. In that view of the Government Order, it is admitted by the learned advocates for the respondents that when petitioner's service book would be referred to by the school authority to the District Inspector of Schools (S.E.) concerned, his case would be considered by the concerned respondent. Considering the contention of the parties, it is admitted position that the petitioner actually was not reverted to the old scale of pay, in view of non-compliance of a vital condition of refund of money as stipulated in the Government Order under memo No. 59-SC(b) dated 17th April, 1995. In view of such position, it will be deemed that the petitioner neve reverted to the old scale of pay with his right to be considered for extension of service up to 65 years of age. In fact, the petitioner had already retired at the age of 60 years and his earlier option for the revised scale of pay remains valid as there was no valid change of such option by refund of revised scale of pay as drawn by the petitioner. In that view of the matter, it is declared that the petitioner's case would be guided and controlled by the ROPA Rule 1990 for payments of all arrear salary, service benefits and retirement benefits. The petitioner has already retired long back i.e. on 30th September, 1995 that is about more than 6 years back. It is an unfortunate case that poor teacher has been deprived off from getting the service benefits and retirement benefits. By Government order, wherein it was made clear that the teachers like the petitioner never opted to the

old scale of pay with right to continue in service up to 65 years". It is a settled legal position that the Government Authorities as well as all respondents must pay the retirement benefits immediately on retirement by preparing papers six months before such retirement and failing to do such and non-payments of the retirement benefits after retirement, would attract penal consequence in the nature of payments of interest in the Instant case despite the Government order and direction making a clear position that without refund of excess money, there would be no reversion, it is not understandable why the respondents concerned did not release the petitioners retirement benefits and arrear salaries. In that view of the matter, the respondents concerned, must pay the Interest on the arrear amount. Non-reference of papers by the school authorities concerned if any, which is not admitted by the petitioner, will not exempt the respondents from paying such Interest on money which was due to the petitioner. It is now settled legal position that retirement benefits is the property in the hands of the employee's concerned and it is further settled legal position that the Interest at the rate of 12% must be paid by the authorities concerned. Considering the relevant Judgments of the apex Court to that effect, namely, the case of Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, , judgment passed in the case of R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, and the case of Dr. Uma Agrawal Vs. State of U.P. and Another, , this Court is of the view that the respondents must pay interest at the rate of 12% on the arrear amounts. Accordingly, the concerned respondents are directed to take all steps about release of the petitioner's arrear salaries, allowances and service benefits including all retirement benefits in terms of Revision of pay and Allowance Rules. 1990 along with interest at the rate of 12% per annum from the date of retirement till the date of payments within 8 weeks from the date of communication of order. All the respondents concerned must take appropriate steps as required to be taken by them under the statute so that the petitioner gets all arrear amount Including salaries, the service benefits and retirement benefits within the stipulated period as directed. Interest as would be paid to the petitioner, however, would be allowed to be deducted from the salary of the erring officer by the Director of School Education, West Bengal upon holding enquiry against such officer. The writ application is, accordingly, allowed.

Let xerox certified copy of this order be made available to the learned advocates appearing for the parties.