
(2012) 08 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 6982 (W) of 2010

Hari Pada Samanta

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 08 CAL CK 0047

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Ramdulal Manna, for the Appellant; Jayanta Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Mr. Justice Jayanta Kumar Biswas

1. The petitioner in this WP under art.226 dated April 5, 2010 is seeking a mandamus commanding the respondents to pay him with interest Rs. 34,121 deducted from his gratuity and pension arrears towards recovery of overpaid salary and allowances. The petitioner was a primary school teacher. According to the provisions of the ROPA Rules that he had opted in to, he was to retire from services on reaching the age of 60. Hence he was to retire on July 31, 1995. He was, however, kept in employment till June 30, 1996. Salary, etc. paid for August 1, 1995-June 30, 1996 were deducted from the retirement benefits.

2. With the Affidavit-in-Opposition the respondents have produced a GO No. 845-SE (Pry) dated August 12, 1998 in support of their case that the GO authorised them to recover salary and allowances the petitioner was paid for August 1, 1995-June 30, 1996; for the petitioner opted in to the ROPA Rules, 1990 and hence was to retire from services on reaching the age of 60 on July 31, 1995.

3. Mr. Manna appearing for the petitioner has argued that since the respondents took the petitioner's services salary and allowances he was paid for the period in

question could not be recovered on the grounds of overpayment.

4. The case stated in the opposition as follows. The petitioner was not entitled to serve after July 31, 1995. The GO dated August 12, 1998 entitled the respondents to recover the overpaid salary and allowances from the petitioner's retirement benefits.

5. It is not the case that though the petitioner was superannuated on July 31, 1995, he forcibly continued to attend the school and discharge duty as a teacher. Nor is it the case that the respondents took his services and paid him salary and allowances month by month because of fraud exercised by him. It is evident that the respondents kept the petitioner in employment because of pending Court cases.

6. Now the question is whether salary and allowances he was paid for August 1, 1995-June 30, 1996 could be recovered from his retirement benefits.

7. During the period in question the petitioner worked as a primary school teacher. He was paid salary and allowances month by month only because he discharged his duties. The respondents asserting that the GO entitled them to recover the salary and allowances they paid the petitioner for the period, have not said how they propose to compensate the petitioner whose services they took during the period in question. In my opinion, this is a totally wrong approach.

8. The respondents receiving services from the petitioner and paying him salary and allowances in consideration of such services were not entitled to recover the salary and allowances, when they were not in a position to return the petitioner the services he had given.

9. I am, therefore, of the view that the deduction was unjust, unfair and unreasonable. The principles laid down in Syed Abdul Qadir and Others Vs. State of Bihar and Others, squarely apply to the case.

11. I am, however, bound to take a different view if it is found the GO dated August 12, 1998 entitled the respondents to recover the salary and allowances they paid the petitioner for the period in question.

12. It is evident from the GO dated August 12, 1998 that it was issued referring to a Division Bench order of this Court dated February 12, 1996 in an FMAT No. 1997 of 1995 (State of West Bengal v. West Bengal Primary School Teachers' Association & Ors.) and an order of the Supreme Court dated April 11, 1996 in a Petition for Special Leave to Appeal (Civil No. 5943 of 1996) arising out of the Division Bench decision dated February 12, 1996 in the FMAT No. 1997 of 1995.

13. While by the order dated February 12, 1996 the Division Bench concerned of this Court allowed the appeal and dismissed the WP, by the order dated April 11, 1996 the Supreme Court simply dismissed the special leave petition.

14. Nothing in the orders entitled the State to issue the GO dated August 12,

1998 for, inter alia, allowing the teachers who continued in employment after the age of 60 to opt in to the ROPA Rules 1990, only if they were ready to reimburse the salary and allowances they were paid for serving after 60.

15. The GO dated August 12, 1998 could not authorise the respondents to recover the salary and allowances paid for the period in question, especially when they kept the petitioner in employment, presumably, because of interim orders passed by the Court and when the Court finally disposing of the cases were not requested to pass order permitting recovery of the salary and allowances paid to the teachers like the petitioner from their retirement benefits.

16. The recovery would have been authorized and lawful only if the Court under whose interim orders the petitioner was continued in employment had permitted the respondents to recover the salary and allowances paid for the period in question. For these reasons, I allow the WP and direct the State to pay the petitioner the recovered amount with 7% p.a. interest from the date of the pension payment order, within six weeks from the date this order is served. No costs. Certified xerox.