(2013) 01 CAL CK 0087

In the Calcutta High Court

Case No : Writ Petition No. 4447 (W) of 2010

Iswar Chandra Jana — APPELLANT

Vs

State of West Bengal and Others — RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) LabIC 2402

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Manoranjan Jana, for the Appellant;Chittaranjan Ghosh, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under Art. 226 of the Constitution of India dated February 26, 2010 is questioning deduction of Rs. 86,551 from his retirement benefits. He was a primary school teacher. He opted in to the Revision of Pay and Allowance Rules, 1990 made by the Government of West Bengal. Accordingly, he was to retire from service on reaching the age of 60 on November 30, 1993. He was free not to opt in to the Revision of Pay and Allowance Rules, 1990 and to continue to enjoy the benefits of the Revision of Pay and Allowance Rules, 1981 into which he had previously opted. In such case, after reaching 60 he would have been entitled to yearly extensions upto the age of 65. At the relevant date he chose not to opt in to the 1990 Rules, and accordingly, he started getting the yearly extensions under the 1981 Rules.

2. On June 30, 1996 when he was enjoying the third extension his service stood terminated, because he decided to opt into the 1990 Rules. The Government of West Bengal issued an order dated August 12, 1998 for resolving the problems such as the one of the petitioner''s. Since the petitioner was not entitled to the benefits of both the 1990 and the 1981 Rules at once, he was required to act on the Government Order dated August 12, 1998, if he wished to get the benefits of the 1990 Rules.

3. He acted on the order and gave an undertaking dated November 6, 1998 that he would not claim any remuneration for the services he had given from December 1, 1993. Accepting his offer, the respondents gave him the benefits of the 1990 Rules and issued the Pension Payment Order dated November 9, 2000 showing the recovery of Rs. 86,551 salary and allowances overpaid from December 1, 1993 to June 30, 1996, from the payable retirement benefits.

4. The petitioner accepted the Pension Payment Order dated November 9, 2000 and the decision of the respondents to deduct the overpaid salary from his retirement benefits, and then quite abruptly he wrote a letter dated December 23, 2009 to the Director of Pension, Provident Fund and Group Insurance and the District Inspector of Schools concerned asking them to pay him the recovered amount. Then alleging inaction he brought this WP.

5. The respondents have filed an Affidavit-in-Opposition dated June 6, 2012 and they have produced the Government Order dated August 12, 1998 and the undertaking dated November 6, 1998.

6. Mr. Jana appearing for the petitioner has submitted that according to the terms and conditions of the extension orders, a copy of one of which is at p.27 of the WP. the respondents could not recover the salary and allowances the petitioner was paid from December 1, 1993 under the 1981 Rules. His submission is that the petitioner gave the undertaking dated November 6, 1998 under pressure that was created by withholding the retirement benefits.

7. On June 30, 1996 when the petitioner''s service was terminated, the petitioner, enjoying the third yearly extension under the 1981 Rules, was free to remain in employment and seek the benefit of the yearly extensions till the age of 65. But he consciously decided to opt in to the 1990 Rules providing for better service benefits and higher scale of pay, but shorter service term, and accepted the termination of service with better retirement benefits.

8. The petitioner did not question the validity of the Government Order dated August 12, 1998. On the contrary, acting on the order he submitted an undertaking that he would not claim any salary and allowances from December 1, 1993. Acting on his undertaking, the respondents gave him the retirement benefits under the 1990 Rules. He accepted the benefits as back as 2000. Till 2009 he found no reason to make any grievance and in 2009 quite abruptly he felt aggrieved.

9. In my opinion, his claim was not entertainable. He could not get the benefits under both the Rules at once and go beyond his own undertaking. For these reasons, I dismiss the WP. No costs. Certified Xerox.

