
(2014) 10 CAL CK 0015
In the Calcutta High Court
Case No : W.P. No. 3411(W) of 2011

Juthika Tokdar

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 309
Penal Code, 1860 (IPC) — Section 420

Citation : (2014) 4 CALLT 505 : (2015) 5 CHN 389 : (2015) 3 WBLR 234

Hon'ble Judges : Asim Kumar Roy, J

Bench : Single Bench

Advocate : Ekramul Bari, Soumik Ganguly and S.S. Mondal, Advocates for the Appellant; Soumitra Bandyopadhyay, Advocates for the Respondent

Judgement

Asim Kumar Roy, J.—The subject matter of challenge in this writ application is an order issued by the respondent/authority, whereby the writ petitioner, an Assistant approved Teacher of Pakuahat Ananda Niketan Mahabir High School, Malda, was directed to refund an overdrawn salary of Rs. 7,41,045/-, on the allegation she joined her service by fraudulently and dishonestly hiding her real age and thereby remained in service for more than 2 years, after she crossed the age of superannuation, without such service period being sanctioned by the Government Rules and withholding of her pensionary benefit. Mr. Bari, the learned Counsel appearing on behalf of the writ petitioner submitted that the allegations against his client are incorrect and even assuming that she has overdrawn her salary by remain in service for 2 years after crossing the age of superannuation, still the authority concerned, without initiating departmental proceedings against her in accordance with law, has no legal right to either call upon her to refund the overdrawn salary or to withhold her pensionary benefits. He further submitted, in any event no departmental proceeding can now be initiated against her after she retired from her service. He lastly contended the pendency of a criminal case is no ground to withhold the pensionary benefit of

any person.

2. Mr. Partha Sarathi Bhattacharya, the learned Counsel appearing on behalf of the Managing Committee of the School submitted that the petitioner joined the School in the year 1981 declaring her date of birth to be on January 14, 1951 and according to her own declaration, her such date of birth was recorded in her Service Book under her own signature. Thereafter she worked in the school till March, 2010 and only when she submitted her superannuation papers to the District Inspector of School (S.E.), Malda, on March 17, 2010, it was detected from her age related educational documents that her actual date of birth was January 14, 1948. He then pointed out after detection of such fraud, on and from March 19, 2010 she remained absent in school. It is then contended by him that by such misrepresentation and practising fraud, the writ petitioner remained in service for two years more after she crossed the age of superannuation and thereby cheated the State and the public at large. He further submitted that no departmental proceeding could have been initiated during her tenure in service, since such fraud was detected after her retirement and from the superannuation papers submitted by her on March 17, 2010 to the respondent authorities. He further pointed out at once such fraud was detected, the Secretary of the Managing Committee of the School, on May 18, 2010, lodged a First Information Report to the concerned police station against the delinquent and on the basis of such complaint, an FIR being Bamongola Police Station Case No. 56 of 2010 was registered and after completion of investigation, Police has submitted charge-sheet under section 420 IPC against the petitioner and the matter is now pending for trial being the G.R. Case No. 1702 of 2010 before the learned Judicial Magistrate 2nd Court, Malda. He then vehemently contended in view of such circumstances, the School authority by annexure P/4 called upon the writ petitioner to refund the overdrawn salary, she obtained after she crossed the age of superannuation and her pensionary benefit has been withheld till the conclusion of her trial in the criminal case. He further submitted that the action taken by the respondent/authorities is fully justified.

3. Mr. Soumitra Bandyopadhyay, the leaned Counsel appearing on behalf of the State has adopted the submission of Mr. Bhattacharya and contended that the said criminal case has already ended in a charge-sheet and the trial is likely to commence quite soon. He then contended that the writ petitioner by practising fraud remained in service even after crossing her age of superannuation and made huge wrongful gain. He insisted for dismissal of this writ application.

4. Heard the learned Counsel appearing on behalf of the parties. Considered their respective submissions and the materials on record and the decisions relied upon.

5. On perusal of the Service Book of the writ petitioner, annexed with the affidavit-in-opposition, it appears that her date of birth was noted therein, as January 14, 1951 and that particular page of the Service Book where the date of birth along with her other particulars were recorded were under her signature. Now, from her Higher Secondary Certificate, also annexed with affidavit-in-

opposition, her date of birth however was found to be on January 14, 1948. The above fact prima facie shows that while the writ petitioner joined her service in the school, she concealed her actual date of birth and by giving an incorrect date of birth remained in service for about 2 years even after crossing the age of superannuation. According to the respondent/authorities, as per the service rule, the writ petitioner was not eligible to remain in service after January 14, 2008, when she reached the age of superannuation. On the aforesaid background, indisputably she remained in the service for two years more against the service rule and drew the salary for the said period. However, the fact remains during the period in which according to the respondents, the writ petitioner remained in service after crossing the age of superannuation, indisputably her service as a school teacher was obtained by the school. She regularly attended the school and took the classes and taught the students. Such facts has not been, disputed from the side of the respondent/authority. This is not one of such case where the writ petitioner obtained the salary without actually rendering any service or that she drew more salary by practising fraud than to which she was actually entitled. Therefore, the question of recovery of salary which she allegedly received during that period, against rendering actual service, not at all be justified, proper and expedient in the interest of justice.

6. However, the submission of the learned advocate of the writ petitioner that no departmental proceeding being initiated against the writ petitioner during her service tenure and thus no action can be taken against her, merits no consideration. This is a case where the writ petitioner could not have been proceeded departmentally for misconduct for the simple reason the fraud practiced by her in concealing her actual date of birth was discovered after she submitted her superannuation papers including the educational certificates. It is an admitted position she submitted her superannuation papers sometime in the middle of March, 2010 and that too, after she retired on and from February 28, 2010 taking advantage of two years" additional service on the strength of a false declaration as to her date of birth. This is not one of such case although the misconduct was known to the employer before the superannuation of the employee but still no disciplinary action was taken against her, until she retired from service.

7. Be that as it may, pensionary benefit is not a charity to any employee. The employee earns such benefit by rendering long services and in consideration of the past services rendered by him or her. It is often described as deferred portion of compensation for the past service and in the nature of social security plan to ensure the basic needs of the life. Certainly, the right to pensionary benefit can be denied if it is found that the appointment was void because the same was obtained by practising fraud eg. appointment was obtained in the reserved category by production of false caste certificate, or on the strength of a false educational certificate although actually the person concerned is under qualified or on the strength of false age proof certificate to support the claim that the person concerned has not exceeded the age limit at the entry point. Admittedly,

it is not the case of the respondents that the writ petitioner entered in service by falsely claiming her age less than the maximum age prescribed and that time she was over-aged but it is their specific case that she took the advantage of remain in service by reducing her actual date of birth by two years. It is pertinent to note if at that time the writ petitioner disclosed her true age January 14, 1948 that would not disqualify her. In any event, the writ petitioner is entitled to the pensionary benefit admissible to her till January 2008.

8. In the result, this writ application succeeds and stands allowed. The order impugned being annexure P/4 is quashed.

9. The respondent-authorities are directed to recast her pensionary benefit on the basis of her actual date of retirement. So far as the provident fund is concerned, writ petitioner shall be entitled to the contribution of her employer till her reaching of age of superannuation. The amount, if any, deducted from her salary as her contribution towards provident fund after she reached her superannuation on January 14, 2008 be refunded to her without any interest.

10. So far as the criminal case is concerned, the case is now pending for trial before the Learned Judicial Magistrate, 2nd Court, Malda, in connection with G.R. Case No. 1702 of 2010, where the writ petitioner has been charge-sheeted under section 420 IPC. Having regards to the facts, the right to speedy trial is a fundamental right of an accused guaranteed under Article 21 of the Constitution, the court below is directed to at once commence the trial preferably within 4 weeks from the date of communication of this order and to conclude the same in accordance with law within six months thereafter. The court below is directed to proceed with the trial strictly in terms of section 309CrPC.

11. In the result, this writ application is allowed with the observation as above. The office is directed to communicate this order to the learned Judicial Magistrate, 2nd Court, Malda before whom the G.R. No. 1702 of 2010 is pending.

Urgent Photostat certified copy of this order, if applied for, be given to the parties at an early date.