
(2004) 07 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 4537 (W) of 2004

Kamala Kant Jha	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 05-07-2004

Acts Referred:

Citation : (2005) 1 CHN 54 : (2005) 2 ESC 1187

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Pradip Tarafdar and Indrajeet Dasgupta, for the Appellant; Bhudeb Bhattacharya, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—Earlier a dispute was raised in the process of re-fixation of the scales of pay of the petitioner in course of implementation of the ROPA Rules, 1990. The petitioner claimed that in terms of the ROPA Rules, 1990, his pay fixation should have been made at Rs. 2,120/- in the scale of Rs. 1780-3780/-, but the respondent authorities wrongly fixed the pay of the petitioner at Rs. 1975/- in the scale of Rs. 1780-3750/-.

2. Accordingly, the petitioner challenged the said erroneous pay fixation of the petitioner by filing a writ petition being C. O. No. 709(W) of 1993 earlier in this Court.

3. During the pendency of the said writ petition, the District Inspector of Schools (Secondary Education), South 24-Parganas by an Office Memo being No. 115 dated 12.3.1997 being Annexure "P-3" to this writ petition, modified the earlier pay fixation of the petitioner and revised the pay of the petitioner at Rs. 2,120/- in the scale of pay of Rs. 1780-3780/- with effect from 1st April, 1986.

4. Since the pay fixation was revised by the concerned District Inspector of Schools during the pendency of the writ petition, the petitioner did not ultimately proceed with the said writ petition. As a result, the writ petition was dismissed for default.

5. It is claimed by the petitioner that after such refixation of pay was made by the concerned District Inspector of Schools, the entire arrear salary with effect from 1st April, 1986 was paid to the petitioner in terms of the said modified pay fixation. It is also claimed by the petitioner that since the time of refixation, the petitioner was also given the salary and other service benefits in the same scale following the said refixation of the pay of the petitioner till the date of his retirement.

6. The trouble once again started after the retirement of the petitioner at the time of settlement of the retiral benefits of the petitioner following an objection raised by the Assistant Director of Pension, Provident Fund & Group Insurance, Government of West Bengal vide his letter under Memo No. DPPG/ SEC/ ALP-60/2002 dated 6.9.02 being Annexure "P-II" to this writ petition. According to the said Assistant Director of Pension, Provident Fund & Group Insurance, the petitioner is not entitled to get the benefit of the said fixation as ultimately the earlier writ petition being C. O. No. 709(W) of 1993 was dismissed for default. Accordingly, the concerned District Inspector of Schools was directed to review the pay fixation of the petitioner.

7. It is submitted on behalf of the petitioner that since then the retiral benefits of the petitioner has not been finalised by the authorities concerned. Accordingly, the petitioner has filed this writ petition seeking direction upon the respondent concerned so that the retiral benefits of the petitioner are released by the authorities concerned at an early date.

8. Mr. Bhudeb Bhattacharya, learned Senior Advocate for the State respondents submits that the petitioner is not entitled to get the benefits of the revised scale which according to Mr. Bhattacharya was given to the petitioner in terms of the interim order passed by this Court in connection with the earlier writ petition being C. O. No. 709(W) of 1993.

9. Mr. Bhattacharya further submits that since certain excess amount had been paid to the petitioner due to such erroneous refixation of the scale of pay to the petitioner, the concerned authority wants to adjust the overdrawal amount against the retiral benefits of the petitioner. Accordingly, Mr. Bhattacharya submits that the petitioner is not entitled to get the benefits of the pay fixation as mentioned in Annexure "P-3" to this writ petition.

10. After hearing the submissions of the learned Advocate for both the parties and after considering the materials on record, it appears to me that the pay fixation as contained in Memo No. 115 dated 12th March, 1997 being Annexure "P-3" to this petition was not made by the District Inspector of Schools in terms of any interim order passed by this Court. At least, it was not disclosed in the said Memorandum that the said refixation was made in terms of the interim order of this Court. Even nothing could be produced by Mr. Bhattacharya to show that the said refixation was made in terms of the interim order of this Court. Mr. Bhattacharya also could not establish before this Court that the pay fixation of

the petitioner at Rs. 2,120/- was erroneous and the petitioner was not entitled to the said scale.

11. Thus, I find that the said refixation was made by the authorities concerned themselves on their own and I do not find any participation of the petitioner in the process of such refixation.

12. In such view of the matter, even if it is found that such pay fixation was made erroneously by the authorities concerned and any overdrawal was made by the petitioner on account of such erroneous pay fixation, such overdrawal cannot be adjusted and/or realised from the retiral benefits of the petitioner by the respondents in view of the decision of the Hon''ble Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, .

13. That apart, when such refixation was not made in terms of the interim order of this Court, the submission made by Mr. Bhattacharya to the effect that the petitioner cannot be allowed to enjoy the benefit of the interim order after dismissal of the writ petition on default, does not commence to this Court at all.

14. I, however, find substance in the submissions of the learned Advocate for the petitioner and I hold the petitioner is entitled to get the benefit of pay fixation as contained in Annexure "P-3" to this petition. By following the decision of the Hon''ble Apex Court in the case of Shyam Babu Verma (supra), I further hold that even if any excess payment was found to have been made to the petitioner while he was in service, such excess payment cannot be realised and/or adjusted from the retiral benefits of the petitioner after his retirement, particularly when it is found that the petitioner had no hand either in the process of such refixation of pay or in the process of such alleged overpayment.

15. Accordingly, I dispose of this writ petition by quashing the objection raised by the Assistant Director of Pension, Provident Fund & Group Insurance, Government West Bengal as contained in the Return Memo No. 1643/RM/DPPG/SEC/APL-60/2002 dated 21st October, 2002 being Annexure "P-II" to this writ petition and I direct the respondent authorities, viz., the Director of Pension, Provident Fund & Group Insurance, Finance Department, Government of West Bengal, being the respondent No. 3 herein to issue the Pension Payment Order on the basis of the last pay drawn by the petitioner for releasing arrear pension, gratuity and other retiral benefits within eight weeks from the date of communication of this order.

16. The said respondent is also directed to release the retiral benefits in favour of the petitioner together with the interest at the rate of 5% per annum. Such interest should be paid upto the date of actual payment of such dues to the petitioner.

17. It is made clear that the Pension Payment Order should be issued to the concerned Treasury Officer in the manner as indicated above so that the ultimate payments can be made to the petitioner within two weeks from the receipt of the

Pension Payment Order from the Director of Pension, Provident Fund & Group Insurance, Government of West Bengal upon compliance of the necessary formalities by the petitioner in this regard.

18. There will be, however, no order as to costs.

19. Urgent xerox certified copy of this order, if applied for, be given as expeditiously as possible.