

(2011) 05 CAL CK 0053
In the Calcutta High Court
Case No : Writ Petition No. 5945 (W) of 2011

Khagendra Nath Ghosh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Citation : (2011) 05 CAL CK 0053

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Saibal Acharya and Sabita Khutia Bhunya, for the Appellant; Chowdhury Faruk Ali, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—The Petitioner was an Assistant Teacher of Simulpur Anandapara Narahori Vidyapith in the District of North 24 Parganas. He was appointed as an Assistant Teacher in the said school on 2nd January, 1970 and his appointment was approved by the concerned District Inspector of Schools on 9th July, 1973 with effect from 1st January, 1971. While he was in service he, with the permission of the Managing Committee of the said school, enhanced his educational qualification by acquiring Master Degree in Islamic History from the University of Calcutta in 1982.

2. The said school was upgraded to Class X High School in 1982. The appointment of the Petitioner along with 12 other teachers in the upgraded section was approved by the Managing Committee of the said school. The Petitioner was shown as an Assistant Teacher in Social Science Group.

3. The District Inspector of School by his letter dated 27th December, 1983 intimated the school authority that higher scale of pay would be granted to the Petitioner for his post graduate degree in Islamic History with effect from 6th September, 1982. Since then the Petitioner was paid his salary in the post graduate scale of pay till his retirement. The Petitioner retired from service on superannuation on 31st October, 2007.

4. Though during the tenure of his service, the Deputy Director of Accounts re-fixed the scale of the Petitioner without giving opportunity of hearing to the Petitioner, but in fact, no effective step was taken by those Respondents to recover the overdrawal in pay from the Petitioner during the tenure of his service despite the Director of School Education by his memo No. 471/2-GA dated 14th February, 2007 advised the District Inspector of School, North 24 Parganas to take action as per the said observation of the Deputy Director of Accounts contained in Memo No. 1069/DDAC/N-24 Pgs dated 9th June, 2006. Instead of recovering the said excess amount from the Petitioner's salary during the tenure of his service, the concerned Respondent deducted such overdrawal in pay from his retired benefits payable towards his death-cum-retiring gratuity immediately after his retirement.

5. Being aggrieved by such action of the said Respondents the Petitioner has filed the instant writ petition seeking appropriate reliefs.

6. Let me now consider as to how far such action of the Respondents can be supported in the facts of the instant case.

7. Though it is true that overdrawal in pay due to wrong pay fixation of an employee by his employer, cannot be realised from the retiral benefits of the retired employee when the employee had no role in re-fixation of his pay scale, but if such error is detected by the employer during the tenure of the service of the concerned employee, realization of the excess payment due to wrong pay fixation by the employer from the service benefit of the employee during the tenure of his service, is permissible.

8. In the present case this Court finds that the error in re-fixation of pay was detected by the authorities during the tenure of the Petitioner's service in June 2006. The Petitioner's pay scale was re-fixed by the Deputy Director of Accounts in 2006. The Petitioner was intimated about re-fixation of the pay scale before his retirement, but still then no effective step was taken by the concerned authority for realising the excess payment from the salary of the Petitioner while he was in service.

9. On receipt of such information about re-fixation of his salary by the Deputy Director of Accounts, the Petitioner submitted a representation to the Director of School Education requesting him not to recover such excess payment from his salary as he had already spent his entire service benefits for maintaining his family during the tenure of his service and further he had to take loan to meet his family requirement.

10. Let me now consider as to how far such re-fixation of salary of the Petitioner by the Deputy Director of Accounts, was justified in the instant case.

11. This Court finds that no opportunity was given to the Petitioner before the pay scale of the Petitioner was re-fixed by the Deputy Director of Accounts. It is well-settled that reduction in pay without hearing the concerned employee is not

permissible. As such this Court holds that the re-fixation of the Petitioner's pay by the Deputy Director of Accounts was made in violation of principles of Natural Justice and as such re-fixation of the Petitioner's pay of scale by the Deputy Director of Accounts in the manner as aforesaid, cannot be retained in record. Furthermore since the Petitioner has already retired from service on superannuation and realisation of excess payment from him after his retirement is now not possible, no useful purpose will be served by directing the concerned authority now to ascertain the exact pay scale which was admissible to him as per law.

12. Under such circumstances, instead of remitting this matter to the concerned authority for reconsideration of the issue regarding fixation of the pay scale which was admissible to the Petitioner during the tenure of his service, this Court disposes of this writ petition by directing the state Respondents to refund the deducted amount of Rs. 2,18,840/- to the Petitioner within 8 weeks from the date of communication of the order.

13. The concerned authority is also directed to recalculate the retiral benefit and/or the pensionary benefits of the Petitioner on the basis of his last drawn salary and pay the Petitioner his admissible dues as per such calculation within eight weeks from the date of communication of the order. In the event the entire payment, as aforesaid, is made to the Petitioner within the time as aforesaid, the Respondents are not required to pay any interest to the Petitioner, but in default of such payment within the time as aforesaid, the Respondents are required to pay interest @ 8% per annum on delayed payment of such admissible dues of the Petitioner from the date of his retirement up-to the date of actual payment thereof.

14. The writ petition is, thus, disposed of.

15. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.