Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 26/08/2026

(2016) 12 CAL CK 0040

In the Calcutta High Court

Case No : W.P. No. 7703(W) of 2016

Md. Sayed — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 CalLT 129

Hon'ble Judges : Sahidullah Munshi, J.

Bench : Single Bench

Advocate : Mr. Saibal Acharya and Mr. Sariful Islam Mallick, Advocates, for the Petitioner; Mr. Supriyo Chattopadhyay and Ms. Iti Dutta, Advocates, for the State; Ms. Indrani Pal and Mr. Pinaki Dhole, Advocates, for the Respondent No. 8; Mr. Syed Nazmul Hossain and

Final Decision : Allowed

Judgement

Sahidullah Munshi, J.—This writ petition is directed against a purported refusal of the respondent no.5, the District Inspector of Schools (S.E.), Malda, to issue clearance certificate for drawing pension and other retirement benefits of the petitioner despite receiving "No Liability Certificate" from the school authority and despite the fact that the Pension Payment Order (hereinafter referred to as P.P.O.) from the respondent no.3, Director of Pension Provident Fund and Group Insurance (Branch Office) has already been issued.

2. In the writ petition following case has been made out :-

(a) The petitioner was appointed as an Assistant Teacher at Malda Model Madrasah (H.S.), in the Town of Malda in the year 1982 and, thereafter he was appointed in the post of Assistant Headmaster on and from 1st October, 1996. His such appointment was approved by the concerned authority.

(b) Subsequently, the petitioner was appointed in the post of Headmaster of the said Madrasah wherefrom he was superannuated on and from 31st January, 2016.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-...

(c) The petitioner duly filled up his pension booklet and submitted the same to the appropriate authority much prior to his retirement and according to him, he duly discharged all his formalities in time to avail the pensionary benefits including gratuity, provident fund and/or commuted value of pension as per provision laid down in the Government orders.

(d) The Secretary of the Madrasah also duly forwarded the application together with all relevant papers of the petitioner for final withdrawal of provident fund money with interest vide Memo No.MM-29/2015 dated 10th December, 2015.

(e) The petitioner''s name was deleted from the list of teachers'' monthly salary details for the month of December, 2015 in online salary management system and after he came to know the said fact he wrote letters to the respondent no.5, District Inspector of Schools (S.E.), Malda to insert his name for the month of December, 2015 in the online salary management system, but to no effect for the reasons best known to the said respondent no.5.

(f) The petitioner retired from the post of Headmaster of the Madrasah on 31st January, 2016 upon attaining the age of superannuation and the respondent no.7, the Managing Committee, Malda Model Madrasah (H.S.), issued "No Liability Certificate" in favour of the petitioner.

(g) Upon verification of the petitioner''s service records P.P.O. has been issued by the respondent no.3, the Director of Pension, Provident Fund and Group Insurance (Branch Office) vide Memo No. U/S/00161/020/2016 dated 1st February, 2016 thereby sanctioning the amount of pension, gratuity and commuted value of the pension payable to the petitioner.

(h) Immediately after receiving the P.P.O. petitioner duly appeared before the concerned Treasury Officer and, ultimately, the petitioner submitted original "No Liability Certificate" together with a copy of the P.P.O. in the office of the respondent no.5, District Inspector of Schools (S.E.), Malda on 11th February, 2016 to obtain the clearance certificate for drawing pension, but the same was not done.

3. Arrear salaries, provident fund money, pensionary benefits including gratuity are the property of the petitioner. The respondent no.5 is the drawing and disbursing officer of grant-in-aid of the Madrasah in question and being pension sanctioning authority he was under obligation to release arrear salaries, provident fund along with other retirement benefits. The petitioner is deprived as the respondent/District Inspector of Schools (S.E.), Malda, has withheld the above-mentioned payments and the same is violative of the provisions of the pension scheme.

4. The petitioner made a representation on 17th February, 2016 before the respondent no.5 but he did not take any steps to make payment of arrear salaries for release of provident fund and also has not issued clearance certificate, on the contrary, vide his Memo No.315 dates 2nd March, 2016,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

directed the petitioner to move before the respondent no.2, Director of Madrasah Education, West Bengal, for necessary action in order to get the relief.

5. In support of the petitioner''s case Mr. Acharya, learned counsel appearing for the petitioner has submitted that in response to the petitioner''s prayer for getting arrear salaries, provident fund money and clearance certificate to draw pension the District Inspector of Schools'' Memo dated 2nd March, 2016, addressed to the petitioner is contrary to law and the same cannot be sustained. He submitted that the Madrasah authority being the appointing authority of the petitioner having not initiated any disciplinary proceedings against the petitioner and particularly, when "No Liability Certificate" has already been issued by the Managing Committee, the District Inspector of Schools is not authorised to withhold the petitioner''s arrear salaries, provident fund money, pensionary benefits and so on. The District Inspector of Schools can also not withhold the "No Objection Certificate" to the petitioner for release of pension. He submitted that when P.P.O. has already been issued by the respondent no.3 by a Memo dated 1st February, 2016, i.e., after retirement of the petitioner, the respondent no.5 is without any jurisdiction to issue the Memo dated 2nd March, 2016 being Annexure P-8 to the writ petition holding that the petitioner should get necessary order from the Director of Madrasah Education, although, he is not the authority under the scheme.

6. In support of the petitioner''s case Mr. Acharya, learned counsel appearing for the petitioner, has placed a Government Order issued under Memorandum No.88/ SE(B)/EES/OIB/IM-9/98 dated 26th May, 1998, issued by the School Education Department, Budget Branch, Government of West Bengal. The said Memorandum has been issued by the Government on the scheme for payment of pension and gratuity on the date of superannuation to the employees of West Bengal recognised non-Government Educational Institutions and introduction of comprehensive form in connection with sanction of pension cases.

7. Certain procedures have been laid down by the Government under the said Memorandum. Procedure No.5 says about procedure to be followed by the Director of Pension, Provident Fund and Group Insurance, West Bengal. Sub-Procedure 5.1 says that on receipt of pension papers completed in all respects from the pension sanctioning authority/District inspector of Schools, but six months in advance from the date of superannuation of the employee the Director of Pension, Provident Fund and Group Insurance shall apply requesting check for the admissibility of pension, gratuity and family pension, commutation value of pension, if any. Sub-Procedure 5.2 says that if any information/clarification is wanted, the pension sanctioning authority/District Inspector of Schools shall be contacted within three months from the date of receipt of pension papers. Objection, if any, shall preferably be made at a time covering all the points to avoid delay. Sub-Procedure 5.3 is important in the present case where no information and/or clarification is desired or where necessary clarification has been received from the pension sanctioning authority, the Director of Pension,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

Provident Fund and Group Insurance, after satisfaction, shall straightway issue P.P.O mentioning therein ?

(a) Pension Payment Order.

(b) Authority for payment of gratuity and

(c) Authority for payment of debt value of pension, one month in advance from the date of superannuation of the employee, with the direction to start payment from a specific date as fixed therein. It has been further mentioned that amount of pay reckon-able for pension and the details of liabilities, provisional pension, gratuity (if any) to be recovered from the pensionary benefits shall be mentioned in the P.P.O. In case of "No Liability or No-recovery" that shall also be mentioned in the P.P.O. the pension disbursing officer shall verify the amount of pay and liabilities (if any) from the "No Liability/Liability Certificate" issued on the date of superannuation.

8. The said Procedure No.5 is set out herein below :-

"5. Procedure to be followed by the Director of Pension, Provident Fund and Group Insurance, West Bengal.

5.1. On receipt of pension papers completed in all respects from the P.S.A./D.I., 6(six) months in advance from the date of superannuation of the employee, the DPPG shall apply requisite check for the admissibility of the pension, gratuity and family pension, commutation value of pension, if any.

5.2. If any information/clarification is wanted, the PSA/D.I. shall be contacted within 3 (three) months from the date of receipt of pension papers. Objection, if any, shall preferably be made at a time covering all the points to avoid delay.

5.3. Where no information/clarification is desired or where necessary clarification has been received from the P.S.A., the DPPG after satisfaction, shall straightway issue PPO mentioning therein (i) Pension Payment Order, (ii) Authority for Payment of Gratuity and (iii) Authority for payment of commuted value of pension, 1 (one) month in advance from the date of superannuation of the employee, with the direction to start payment from specific date as fixed therein.

The amount of Pay Reckon-able for Pension and the details of Liabilities, Provisional Pension, Gratuity (if any) to be recovered from the Pensionary Benefit shall be mentioned in the Pension Payment Order (PPO). In case of No Liability or No-Recover that shall also be mentioned in the PPO. The P.D.O./T.O. shall verify the amount of Pay and liabilities (if any) from the "No Liability/Liability Certificate" issued on the date of superannuation.

5.4. If, after the pension papers have been forwarded by the P.S.A. any information is received from P.S.A. or from Appointing Authority/Head of the Institution which has a bearing on the amount of Pension admissible, that shall be, dealt with accordingly.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

If any disciplinary proceeding has been initiated during the intervening period between forwarding of pension papers to DPPG, after receiving such report, the pensionary benefit of the concerned employee shall be stopped, so long as the retiring employee is not honourably acquitted of the charges. Where disciplinary proceeding is pending even after the employee attain the age of superannuation, the DPPG shall not issue the PPO till conclusion of the disciplinary case. No Gratuity or Commuted value of Pension shall be paid during this period. On completion of the disciplinary proceedings, if any employee is honourably acquitted, the DPPG shall issue, PPO. If any court case/Appeal is pending in relation to the concerned employee or in relation to his pension case (either initiated by the employee or appointing authority of Govt. or other) the pensionary benefit shall be released as per direction of the Hon''ble Court.

5.5. When the retiring employee is in receipt of higher pay on the basis of interim orders passed by the Hon''ble Court or where Appeal, if any, is pending, such higher pay may be taken into account for calculation of pension only on provisional basis till finalization of the case. No gratuity or commuted value of pension shall be authorised in such case till finalization of the Court Case and issue of consequential Govt. Instructions.

5.6. The DPPG shall send the PPO to the P.D.O./T.O. with copies to (a) retiring employee and (b) the P.S.A./one month in advance from the date of superannuation of the employee."

9. Mr. Acharya also relies on a Memorandum dated 15th May, 1985, issued under West Bengal Recognised non-Government Educational Institutions Employees (Death-cum-Retirement Benefits) Scheme, 1981. Paragraph 19 of the said scheme has been placed in support of the petitioner''s case to show that full pension admissible under the scheme is not to be given as a matter of course or unless the services rendered has really been approved by the competent authority.

10. Paragraph 19 of the said Scheme is set out below :-

"19. (1) The full pension admissible under this Scheme is not to be given as a matter of course or unless the services rendered has really been approved by the competent authority.

(2) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper :

Provided that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction of the amount of pension shall be made without the approval of the appointing authority.

Note : No pension shall be liable to seizure, attachment or sequestration by process of Court in India at the instance of the creditor for any demand against the pensioner.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

(3) The measure is the reduction in the amount of pension under this Scheme should be the extent by which the employee''s service as a whole has failed to reach a thoroughly satisfactory standard, and any attempt to equate the amount of reduction with the amount of loss caused to the Institution is incorrect.

(4) The service of an employee against whom a charge of corruption has been proved whether in a specific case or by any presumption based on recorded facts cannot be considered to be thoroughly satisfactory with the meaning of this Scheme. Any action under this Scheme should, however, be taken only after a charge of corruption has been proved.

(5) Final pension, gratuity etc. shall not be sanctioned to an employee against whom departmental/judicial proceedings have been instituted/continued. In case of misconduct of the pensioner, the pension sanctioning authority has the power to withhold pension or reduce the pension.

Where any departmental or judicial proceeding is instituted or where a departmental proceeding is continued against an employee who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, la provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying services up to the date of retirement, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed on suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.

Payment of this provisional pension shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note : The grant of pension under this sub-para shall not prejudice the operation of sub-para 2 when final pension is sanctioned upon conclusion of the proceeding."

11. According to Mr. Acharya, the authority has committed a gross illegality by not acting as per the Government rules and schemes. In support of the case of the petitioner Mr. Acharya has relied upon two Division Bench Judgments, namely,

(1) In the case of Durgadas Mukhopadhyay v. State of West Bengal and Ors. decided on 8th November, 2005 and reported in 2000 (4) CHN (Cal) 382 and

(2) In the case of Gour Kanti Samanta v. State of West Bengal decided on March 22, 2013 and reported in 2013 (2) CHN (Cal) 649.

12. Therefore, he prays for a writ of mandamus commanding payment of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

petitioner''s arrear salaries and to release the provident fund money with interest to the petitioner together with gratuity, arrear pension and to start pension forthwith.

13. Learned Counsel Ms. Iti Dutta, appearing with Mr. Supriyo Chattopadhyay, has submitted on behalf of respondent no.5 that the present Teacher-in-Charge, Md. Monirul Islam, was appointed on 1st February, 2016 after retirement of the petitioner. It has been submitted on behalf of the respondent no.5, the District Inspector of Schools, that after retirement of the petitioner the said school was controlled and administered by the Teacher-in-Charge who submitted his report and wherefrom the District Inspector of Schools observed that the petitioner who was a Headmaster, was involved in misappropriation of Government fund. In support of her submission Ms. Datta relied on sub-paragraph XXIII of paragraph 7 of the affidavit-in-opposition of the respondent no.5. she pointed out various discrepancies in the accounts maintained by the petitioner/Headmaster of the Madrasah and, therefore, on the basis of such misappropriation of school fund, the District Inspector of Schools (S.E.) Malda, started making enquiry in considering the matter on the basis of the report of the Teacher-in-Charge and, ultimately, the matter was referred to the higher authorities. It has been stated in sub-paragraph (g) under the aforesaid sub-paragraph XXIII that the Director of Madrasah Education vide its letter dated 29th February, 2016 has passed a direction that all illegal action including misappropriation of Government funds would be thoroughly enquired by the Administrator to be appointed by the Madrasah for which necessary direction by the Hon''ble High Court is required to be passed on the Madrasah Board and to appoint Administrator. Ms. Dutta submitted that taking cognizance of the aforesaid grave allegations against the petitioner this Hon''ble Court may be pleased to pass necessary orders upon the Madrasah Education Board to cause an enquiry. Ms. Dutta also submitted that it will be borne out from the details mentioned in the affidavit-in-opposition that there are many liabilities against the petitioner and departmental proceedings are yet to be settled as per report of the respondent sent to Director of Madrasah Education vide Memo No.153 dated 3rd February, 2016 a date which is after the retirement of the petitioner. Ms. Dutta submitted that the stand taken by the District Inspector of Schools is justified and, therefore, he has rightly withheld payment of retiral benefits including pension to the petitioner.

14. Ms. Indrani Pal, appearing for the respondent no.8, has filed an affidavit-in-opposition affirmed by her client, the respondent no.8, Md. Monirul Islam. Ms. Pal has drawn the attention of this Court that her client, Md. Monirul Islam, lodged complaint on 30th July, 2015 before the District Inspector of Schools pointing out various illegalities and irregularities on the part of the petitioner/ Headmaster while he was in service. It has been alleged by the Teacher-in-Charge that the said Headmaster was involved in various activities which could not be supported by a teacher and, accordingly, the said Teacher-in-Charge signed the said complaint along with other teaching and non-teaching staff. Learned counsel has further drawn the attention of this Court with regard to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

subsequent complaints dated 29th September, 2015, 14th August, 2015, 14th October, 2015 and 11th January, 2016. Ms. Pal has submitted that taking into consideration of the aforementioned complaints addressed to the District Inspector of Schools (S.E.), Malda, the District Inspector of Schools (S.E.), Malda, addressed a Memo dated 16th October, 2015 to the Headmaster/ petitioner. The said Memo was communicated to him on the question of mismanagement in running the Madrasah. The District Inspector of Schools proposed for an enquiry which was scheduled to be held on 30th October, 2015 and the petitioner/Headmaster was directed to remain present in the Madrasah along with all staff as well as students positively. Subsequently, the District Inspector of Schools (S.E.), Malda, also communicated a letter dated 9th November, 2015 to the Headmaster/petitioner and pointed out that on 30th October, 2015 when the District Inspector of Schools visited the schools premises the Headmaster was absent in his Madrasah that he was informed well ahead. However, it has been mentioned in the said letter that the Headmaster was absent on medical ground and he addressed a letter to the District Inspector of Schools to that effect. A further inspection date was fixed on 16th November, 2015. Lastly, the District Inspector of Schools, on 18th December, 2015, addressed a letter to the Secretary, Malda Model Madrasah who was requested to submit an action taken report against the Headmaster and to submit the same before the District Inspector of Schools (S.E.), Malda and if the same was not complied with then the District Inspector of Schools would be compelled to place therein a disbursing officer in favour of his prayer without any intimation.

15. It appears from the materials annexed to the aforesaid affidavit by the said respondent no.8 that the Secretary of the Managing Committee addressed a letter dated 21st December, 2015 to the District Inspector of Schools (S.E.), Malda, with regard to a meeting of a Managing Committee which was scheduled to be held on 26th December, 2015 to examine the allegations raised and to draw any instruction given by the District Inspector of Schools. The Managing Committee held a meeting on 28th December, 2015 and from the Resolution of the said meeting it appears that the Managing Committee has taken a decision to the effect that the Headmaster never acted contrary to the Management rules. Therefore, no punitive action could be taken against the said Headmaster. The Managing Committee also condemned the action of the District Inspector of Schools with regard to deletion of the petitioner''s name from the online salary management system.

16. From the complaints counter-complaints as made by the Teacher-in-Charge and the other teaching and non-teaching staff on the one hand and the Headmaster and the Managing Committee on the other hand, it appears that there was a long standing rift between the management of the Madrasah and some of the teaching and non-teaching staff. The disputes between management and some of its teachers and non-teaching staff were existing at a time immediately before the retirement of the petitioner and such disputes are of a long standing dispute with the knowledge of the State authorities including the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

District Inspector of Schools (S.E.), Malda.

17. Mr. Syed Nazmul Hossain, appeared for the respondent no.9, submitted that his client was the Assistant Headmaster of the Madrasah on the date when the petitioner retired. He submitted that when an Assistant Headmaster is available in the school there is no role for the Teacher-in-Charge. He submitted that the appointment of Teacher-in-Charge was illegal.

18. Mr. Hossain has handed up to this Court a letter dated 22nd September, 2016 written by one Asraf Ali, Secretary of Malda Model Madrasah (H.S.), addressed to Shri Mustafa Kamal, Assistant Headmaster. From the said letter it appears that the Madrasah committee adopted a Resolution on 22nd September, 2016 in its meeting no.402 and handed over charge of the Madrasah as the Head of the said Madrasah till regular Headmaster is appointed and taken over charge from him. In response to the said letter, the said Assistant Headmaster, Shri Mustafa Kamal, informed the Secretary of the Madrasah on 22nd September, 2016 itself that as per decision of the Managing Committee of the Madrasah he took over charge of the Headmaster.

19. Ms. Sanghamitra Nandy, learned counsel appeared for the respondent no.7, the Managing Committee of the Madrasah. She also supports the contention of respondent no.9 and submitted that the Teacher-in-Charge was not validly appointed inasmuch as Assistant Headmaster took over charge of the Madrasah in absence of Headmaster. She submitted that rule does not permit appointment of a Teacher-in-Charge when there is an Assistant Headmaster existing in the Madrasah.

20. Having heard the parties and considered the materials available on the record of the writ petition and the affidavits filed by the respondent nos.5 and 8 it appears that the State authorities have failed to take proper decision against the Headmaster at an appropriate stage. It is the settled law that when Masterservant relationship ceases, Master is not entitled to take punitive action against the servant whatever he is entitled to take when the servant is in service. In the present case, the petitioner was superannuated on and from 31st January, 2016. It is undisputed that the respondent no.8, the so-called Teacher-in-Charge of the Madrasah, immediately after his appointment, started making complaint before the District Inspector of Schools but the District Inspector of Schools (S.E.), Malda, did not take any action. Complaints were made not only by the said respondent no.8 but the other teaching and non-teaching staff also became cosignatories in the complaint of the said respondent no.8. His such complaint appears to have been made before the District Inspector of Schools (S.E.), Malda on 30th July, 2015 long before the petitioner was due to be superannuated. But record reveals that the proceeding for enquiry was initiated only on October, 2015. However, save and except requesting the Managing Committee of the Madrasah the District Inspector of Schools appears to have taken no other steps against the retiring Headmaster, although, he had enough scope to initiate departmental proceeding against the Headmaster/petitioner and even he could

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

have placed the petitioner under suspension immediately after the complaints were made against the petitioner. No such disciplinary proceeding was contemplated against the petitioner. It is also not known as to why the Teacherin-Charge, who claims that he made complaint before the District Inspector of Schools in July, 2015, could not make any other complaint before the Headmaster at an early date, although, in his complaint dated 30th July, 2015, he mentioned various dates of 2014 when financial irregularities were allegedly committed by the Headmaster. Therefore, the Teacher-in-Charge cannot claim that he had no knowledge or that he could not make complaint against the incidence took place in 2014. The District Inspector of Schools, while making enquiry against the illegalities committed by the Headmaster, ought to have also caused an enquiry as to why the respondent no.8 and his co-signatories filed a belated complaint. But, unfortunately, the same has not been done by the District Inspector of Schools for the reasons best known to him.

21. Government has framed a scheme for payment of pension and gratuity on the date of superannuation to the employees of the West Bengal recognised non-Government Educational Institutions and introduction of comprehensive form in connection with sanction of pension cases. The said scheme has been framed under Memorndum dated 26th May, 1998 as already indicated hereinbefore. Procedure 5 of the said scheme is relevant for the decision of the petitioner''s claim in the present writ petition. From paragraph 5.1 under the said Procedure No.5 it is evident that the Director of Pension, Provident Fund and Group Insurance shall apply requesting check for the admissibility of the pension, if any. The said procedure also provides that the Director of Pension, Provident Fund and Group Insurance is supposed to get pension papers complete in all respects from the pension sanctioning authority or District Inspector of Schools six months in advance from the date of superannuation of a particular employee. Therefore, in this case, it can be presumed that the Director of Pension, Provident Fund and Group Insurance received the pension papers of the petitioner much before the retirement of the petitioner from the pension sanctioning authority or the District Inspector of Schools and the Director of Pension, Provident Fund and Group Insurance got sufficient time to check the admissibility of the pension and other claims of the petitioner. It is mentioned under the said procedure that if any information/clarification is required the pension sanctioning authority or the District Inspector of Schools shall be contacted within three months from the date of receipt of pension papers and if there be any objection, the same shall preferably be made at a time covering all the points to avoid delay. Therefore, intention of the Legislature is to keep the incumbent retired employee to be safe and secured from any delay of getting pension in time. The said procedure further mentions that in a case where no information/clarification is desired or where necessary clarification has been received from the pension sanctioning authority, the Director of Pension, Provident Fund and Group Insurance, after his satisfaction, shall straightway issue P.P.O. mentioning therein the Pension Payment Order, authority for

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

payment of gratuity, authority for payment of commutation value of pension, one month in advance from the date of superannuation of the employee with the direction to start payment from specific date as fixed therein. It has been further mentioned that the amount of pay reckon-able for pension and the details of liabilities, provisional pension, gratuity (if any) to be recovered from the pensionary benefit shall be mentioned in the P.P.O. and in case of no liability or non-recovery, that shall also be mentioned in the P.P.O. The pension disbursing authority shall verify the amount of pay and liabilities (if any) from the "No Liability/Liability Certificate" issued on the date of superannuation.

22. In the present case, it appears that the P.P.O. has been issued by the concerned authority and a copy of which is annexed being Annexure P-6 to this writ petition. P.P.O. has been issued on 1st of February, 2016 under Memo No. U/ S/00161/2016 and it was sent to Treasury Office, Malda-I. Clause 7(a) of the P.P.O. is required to be verified in the present case in order to verify whether while issuing the P.P.O. the authority has considered the aforesaid procedure which is required to be followed by the Director of Pension, Provident Fund and Group Insurance, West Bengal. Under clause 7(a) of the P.P.O. it appears that there is a mention of provisional pension, provisional gratuity, employees'' share of C.P.F. and deduction due under Item No. IV. From the above it appears that the Director of Pension, Provident Fund and Group Insurance (Branch Office) has considered the entitlement of the petitioner in details and since there is no mention for deduction due to any reason, it can be presumed that there is nothing to be deducted from the pensioner, that is, the petitioner.

23. Since the Director of Pension, Provident Fund and Group Insurance, West Bengal has found that there was no objection against the petitioner and further that there was a "No Liability Certificate" from the management of the Madrasah in the P.P.O. there was no indication for deduction due to any liability or any other cause. Now, question is if the Director of Pension, Provident Fund and Group Insurance, West Bengal does not mention anything about the liability or does not indicate anything recoverable from the pensionary benefit in the P.P.O. whether the District Inspector of Schools can refuse grant of clearance certificate to the petitioner or can withhold the pensionary benefit to the petitioner. According to the procedure, pension sanctioning authority and/or District Inspector of Schools, after having forwarded the pension papers complete in all respects, long before the superannuation of the employee whether the said District Inspector of Schools can act in a contrary manner. Procedure 6 of the said scheme indicates a procedure to be followed by the pension disbursing officer or treasury officer. It indicates that on receipt of the P.P.O. from the Director of Pension, Provident Fund and Group Insurance in advance the pension disbursing officer/treasury officer shall wait till the pensioner personally appear along with pensioner''s copy of P.P.O. and "No Liability/Liability Certificate issued by the appointing authority or Head of the Institution. It has been further indicated under the said procedure that personal appearance of the pensioner, the pension disbursing officer/treasury officer shall complete formalities

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

prescribed in relevant rules and start payment from the date mentioned in the P.P.O. after deducting/adjusting the recoveries as mentioned in P.P.O./Liability Certificate/provisional pension/provisional gratuity/commuted portion of pension or overdrawal etc., if any. In the present case, no such mention has been made in the P.P.O. Therefore, the authority ought not to have withheld payment of pension and other retiral benefits to the petitioner. The aforesaid schemes further lays down a precautionary measure and cautions against the authorities in the event the procedures are not complied with. It says that failure to comply with the provisions as stated in the said scheme might be seriously dealt with and the authorities so failed or neglected to comply with the provisions be liable for disciplinary action. Even the said authorities may be held personally liable for non-compliance of the procedure required to be followed by them for payment of pension. It has also been categorically stated that for any lapses on their part in this regard the concerned authorities, apart from being liable for disciplinary action, may also be required to pay to the Government such amount which Government may have to pay additionally by way of interest for delayed payment of retiring benefits to the employees.

24. On perusal of the provisions of the West Bengal Recognised Non-Government Educational Institutions (Death-Cum-Retirement Benefit) Scheme, 1981, issued under Memorandum No. 136-Edn. (B) dated 15th May, 1985 it appears that the District Inspector of Schools and the pension sanctioning authority has failed to adhere to paragraph 19 of the aforesaid scheme.

25. Proviso to sub-paragraph 2 says that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction of the amount of pension shall be made without the approval of the appointing authority. In the present case, school management is the appointing authority and note appended to the said sub-paragraph 2 says that no pension shall be liable to seizure, attachment or sequestration by process of Court in India at the instance of the creditor for any demand against the pensioner. However, sub-paragraph 4 implies that in case of any charge of corruption against an employee, if proved, whether in a specific case or by any presumption based on recorded facts, cannot be considered to be thoroughly satisfactory within the meaning of the aforesaid scheme. It clarifies that any action under the said scheme should, however, be taken only after a charge of corruption has been proved. Sub-paragraph 5 further lays down that official pension, gratuity etc. shall not be sanctioned to an employee against whom departmental and/or judicial proceedings have been instituted/continued. In case of misconduct of the pensioner, pension sanctioning authority has the power to withhold pension or reduce the pension.

26. In the present case, the allegations against the petitioner has never been proved. That apart, no disciplinary action was contemplated against the petitioner during his service tenure. Only an enquiry was sought to be made and on the basis of that no conclusion has yet been reached. Therefore, the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

authorities are not authorised by law to withhold the pension of the petitioner in view of the aforesaid scheme. As held by the Hon''ble Apex Court in the case of Durgadas Mukhopadhyay (supra) this Court is of the considered view that rules are provided for disciplinary proceedings and the same can be initiated against an employee but if a teacher retired, there is no question of removal or dismissal after retirement. At the same time, there is no scope for contemplating any disciplinary proceeding against a teacher after his retirement nor a departmental proceeding can be initiated against a retired teacher with retrospective effect. In the present case, no departmental proceeding was initiated nor was there any scope to inflict any punishment upon the teacher. A departmental proceeding can continue so long as the employee is in service unless any rule is cited on behalf of the State respondents that even a departmental proceeding can continue after the retirement of an employee the decision to withhold the pension of the employee as a whole or in part is without any basis. In this case, complaint was made before the District Inspector of Schools (S.E.), Malda, before the employee concerned retired, but nothing contemplated as per rules and the employee was allowed to retire. That being so, the action purported to have been taken by the District Inspector of Schools (S.E.), Malda, against the retired teacher is not sustainable in law. This Court hold that according to paragraph 19(5) of the Pension Scheme of 1981 it is abundantly clear without any ambiguity that the eligibility and the entitlement to pension can be reduced or withheld on certain grounds and certain provisions have been provided therein for determining as to whether the pension should be withheld or in a case it can be reduced. As indicated above, in case any charge of corruption against the employee, pension can be denied but such corruption has to be proved which is mandatory under the aforesaid scheme. Undisputedly, rather admittedly, there was no disciplinary proceeding against the present petitioner. Allegations and/or charges of corruption levelled against him cannot be automatic and in absence of proof no penal action can be taken against the petitioner by way of withholding pension and other retiral benefits. Since there is no provision under the aforesaid scheme, for contemplating any disciplinary proceeding against the retired employee, the attempt made by the concerned authorities to withhold pension is contrary to law and liable to be set aside.

27. As held by the Division Bench in the case of Gour Kanti Samanta (supra), this Court is of the view that once the petitioner was allowed to retire without initiating any disciplinary proceeding or initiating any criminal proceeding, the retirement dues of the petitioner cannot be withheld. The Division Bench, in the aforesaid case while passing the judgment, considered the decision in the case of State of West Bengal v. Haresh Chandra Banerjee and Ors reported in (2006) 7 SCC 651 wherein it was held that pension is not a bounty payable on the sweet-will and the pleasure of the Government. Pension is a condition of service of the employee concerned. Pension and pensionary benefits, which are in nature of deferred remuneration or for service already rendered, have to be released and paid as per the rules. Pension and other pensionary benefits due and payable to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…

an employee are the property of the employee within the meaning of Article 300A of the Constitution of India. No person can be deprived of pension and/or pensionary benefits which are his property, except by authority of law.

28. In view of the observations made above, this Court is of the view that the concerned authorities are not entitled to withhold pension and other retiral benefits of the petitioner. This Court, therefore, directs the respondent no.5, the District Inspector of Schools (S.E.), Malda, to issue clearance certificate in favour of the petitioner within a period of four weeks from the date of communication of this order and the respondent nos.5 and 6 are directed to pass necessary orders for making payment of arrear salaries and other retiral benefits to the petitioner within a further period of six weeks from the date of issuing of clearance certificate.

29. Since there are serious allegations against the petitioner about the financial irregularities involving Madrasah fund which was, in fact, paid from the Government Exchequer and is part of public money and inasmuch as the authorities initiated enquiry against the petitioner to reveal the truth but could not be able to give a complete shape, the State authorities will be entitled to initiate independent appropriate proceeding against the petitioner if allegation of financial irregularities and/or misappropriation of money could be proved through such proceedings. The State authorities shall also be entitled to recover the defalcated Government fund, if any. State authorities shall also be entitled to initiate proceeding after proper enquiry against not only the Headmaster/ petitioner but also against such other persons against whom materials would be revealed as regards misappropriation of public money and commission of criminal breach of trust.

30. Writ petition is allowed.

The Memo dated 2nd March, 2016 issued by the District Inspector of Schools is set aside and quashed.

Urgent Photostat certified copy of this judgment, if applied for, be delivered to the learned counsel for the respective parties upon compliance of all usual formalities.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-sayed-appellant-hash-state-of-…