
(2010) 09 CAL CK 0073
In the Calcutta High Court
Case No : Writ Petition No. 14545 (W) of 2010

Mihir Kumar Halder

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Citation : (2010) 4 CALLT 410

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : A.B. Chakraborty, for the Appellant; Nilima Das for the State, for the Respondent

Judgement

Biswanath Somadder, J.—Having heard the learned advocates for the parties and upon perusing the instant application, it appears that the writ Petitioner has been visited with adverse civil consequences upon his retirement from service.

2. The case of the writ Petitioner is that he joined service on 1 st January, 1973, as an Assistant Teacher in a Free Primary School, situated presently in the district of South 24 Parganas. Subsequently, the writ Petitioner obtained a B. Ed. degree from the University of Calcutta, in the year 1976. Consequently, the Secretary, District School Board, 24 Parganas, by a memo bearing No. 3603/1 dated 19th February, 1982, intimated the Sub-inspector of Schools, Kulpi-I Circle, Post-Kulpi, District-24 Parganas, that the Petitioner, who was an Assistant Teacher of Chakmonohari Free Primary School, has been allowed to enjoy the benefit of "A" Category scale of pay w.e.f. 28th April, 1978, for passing the B. Ed. examination. The Sub-Inspector of Schools was also directed to enter this decision in the Service Book of the writ Petitioner. A copy of the said memo dated 19th February, 1982, is annexed at page 17 of the writ petition marked as Annexure P-3. Since then, the writ Petitioner was allowed to enjoy the benefit of "A" category scale of pay w.e.f. 28th April, 1978, till the date of his retirement, i.e. 30th March, 2009. During that tenure of service, the Respondent authorities also deducted from the writ Petitioner's pay month by month, an amount

calculated at the rate of 8.33% on the basis of the "A" Category scale of pay, towards his provident fund account. Upon his retirement, the Petitioner's pension papers were forwarded to the Director, Pension, Provident Fund & Group Insurance, West Bengal, for payment of his retiral benefits. The Assistant Director, Pension, Provident Fund & Group Insurance, West Bengal, vide memo dated 20th May, 2010, informed the District Inspector of Schools (P.E.), South 24 Parganas, that the pension case in respect of the Petitioner was being returned for reasons stated therein with a request to rectify the defects pointed out before re-submission of the same.

3. The reason for returning the pension papers of the writ Petitioner, as stated in the memo dated 20th May, 2010, is quoted hereinbelow:

The teacher pursued B. Ed. after his appointment. As per G.O. No. 117-SC(P) and 1192-Edn(P) "A" category scale of pay cannot be allowed in such cases. So pay should be recast in "B" category of pay instead of "A" category of pay in the service book from 28.4.78 and as the case is CPF so family pension is not applicable here. So the Input Sheet, Part-D are to be rectified accordingly.

4. It has been contended by the learned advocate for the Petitioner that his client has been visited with adverse civil consequences upon his retirement from sendee, without even being allowed an opportunity of being heard and present his point of view. He further submitted that all along during the service period of the writ Petitioner, as indicated hereinbefore, he enjoyed the "A" Category scale of pay. No payment has been made by the Respondent authorities at any stage in favour of the writ Petitioner, on the basis of an(sic) misrepresentation by him or upon practising fraud. He submitted that the principle of law as laid down by this Court in Chittaranjan Maitiv. State(sic) West Bengal and Ors. reported in 2010 (2) CLJ (Cal) 241 is squarely applicable in the facts of the instant case. In such circumstances, he prays for an(sic) appropriate order to be passed in favour of the writ Petitioner.

5. On the other hand, learned advocate representing the State refers to(sic) the two Government. Orders which have been cited by the Assistant Director, Pension, Provident Fund & Group Insurance, West Bengal, in his memo dated 20th May, 2010. She submits that under the said two Government Orders the writ Petitioner is not entitled(sic) to enjoy "A" Category scale of pay. She further submits that the impugned memo dated 20th May, 2010, which refers to the said two Government Orders does not suffer from any infirmity of reasoning which would warrant interference of this Court.

6. After considering the submissions made on behalf of the parties and upon perusing the records of the instant case, it appears from the admitted position that the writ Petitioner was granted benefit of "A" Category scale of pay by the Secretary, District School Board, 24 Parganas, which appears clearly from the memo dated 19th February, 1982. In the said memo dated 19th February, 1982, which was addressed to the Sub-Inspector of Schools, Kulpi-I Circle, Post-Kulpi,

District-24 Parganas, it was specifically stated that the writ Petitioner, who was an Assistant Teacher of Chakmonohari Free Primary School, had been allowed to enjoy the benefit of "A" Category scale of pay with effect from 28th April, 1978, for having passed his B. Ed. degree. Therefore, the concerned Respondent authorities allowed the writ Petitioner to enjoy the "A" Category scale of pay till the date of his retirement. No memo/ order is forthcoming from the Respondent authorities which would go to show that the memo dated 19th February, 1982, issued by the Secretary, District School Board, 24 Parganas, to the Sub-Inspector of Schools, Kulpi-I Circle, was ever superseded or set at naught. On the contrary, the Respondent authorities were deducting, month by month, an amount equivalent to 8.33% of the writ Petitioner's pay, computed on the basis of the "A" Category scale of pay, towards the provident fund account of the writ Petitioner. In such circumstances, the two Government Orders referred to in the impugned memo dated 20th May, 2010, issued by the Assistant Director, Pension, Provident Fund & Group Insurance, West Bengal, has no manner of application at all in the facts and circumstances of the instant case. Moreover, it is not the case of the Respondent authorities that the writ Petitioner at any point of time misrepresented or practised fraud for the purpose of obtaining the benefit of "A" Category scale of pay. As such, there is no reason as to why the writ Petitioner's pension papers are required to be re-submitted in terms of the observations made in the impugned memo dated 20th May, 2010.

7. It has been observed in Chittaranjan Maiti (supra), inter alia, that if the writ Petitioner has obtained payment without misrepresentation or practising fraud and if there was carelessness on the part of the officials of the State of West Bengal to compute payment of salary, while the writ Petitioner was in service for long period of time, such negligence and/or carelessness solely due to some inefficient and callous officials, cannot be corrected and/or set right by deduction from an amount due and payable to the writ Petitioner.

8. The writ Petitioner, in the facts of the instant case, has obviously been visited with adverse civil consequences, without having been given an opportunity of being heard, upon issuance of the memo dated 8th March 2010, by the Assistant Director, Pension, Provident Fund and Group Insurance, West Bengal. Thus, the ratio laid down in Chittaranjan Maity (supra) is squarely applicable in the facts and circumstances of the instant case.

9. For reasons stated above, the impugned order dated 20th May 2010, is liable to be set aside and is hereby set aside. The Director Pension, provident Fund & Group Insurance, West Bengal, shall take a fresh decision in the matter, in the light of observation made hereinabove after giving adequate opportunity of hearing to the writ Petitioner. Such decision shall be supported with cogent reasons and shall be passed as expeditiously as possible, preferably within a period of eight weeks, but not later than twelve weeks from the date of communication of a photostat certified copy of this order.

10. The writ petition stands disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties.