(2012) 02 CAL CK 0005

In the Calcutta High Court

Case No : Writ Petition No. 7843 (W) of 2007

Mihir Kumar Maity — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Citation : (2013) 1 CHN 34

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Saibal Acharya and Rama Halder, for the Appellant; Sadananda Ganguli and Mintu Kumar Goswami, for the Respondent

Final Decision : Allowed

Judgement

Jyotirmay Bhattacharya, J.—The petitioner herein was appointed as a Craft Teacher in Mayayanharh High School in the District of Paschim Medinipur. His appointment as Craft teacher in the said school was approved by the then District Inspector of School (Secondary Education), Medinipur, with effect from 1st January, 1971. The approval of the petitioner''s appointment as Craft Teacher was communicated to the school authority by the said DI of School vide his letter No. 1188-8 dated 9th May, 1972. The petitioner''s entitlement to the salary in terms of G.O. No. 343(END-S) dated 3rd March, 1973 with effect from 1st May, 1972 was confirmed by the said DI of the school vide his letter dated 4th March, 1975 under memo No. 1452-5. The petitioner retired from service on superannuation on 31st October, 2004. His pension paper was submitted to the concerned DI of school Secondary Education, Paschim Medinipur by the school authority on 13th April, 2003. Trouble started after submission of the petitioner''s pension papers, in course of settlement of the retiral dues of the petitioner as the District Inspector of School, Secondary Education, Paschim Medinipur was of the view that the scale of pay which was given to him for his craft training, in fact, was not admissible to him as he did not complete two years'' training course. According to the said DI of school, since the petitioner did not complete two years'' training course, he was entitled to pay scale admissible to the Assistant Craft Teacher having one year''s training qualification. Thus, he was of the view that the excess money which was paid to the petitioner on account of his wrong pay fixation was either required to be refunded by him or the same may be adjusted against his retiral dues. As a matter of fact, a sum of Rs. 2,26,986/- was adjusted against his retiral dues on account of overdrawal in pay due to such wrong pay fixation.

2. The petitioner has challenged the authority and/or competence of the State respondents for recovering the said amount of Rs. 2,26,986/- by way of adjustment against his retiral dues after his retirement.

3. This very point as to the competence to the State respondents to recover overdrawal in pay from a retired person out of his retiral dues after his retirement was considered by the Hon''ble Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, page 521 wherein it was held that if any excess payment is made to an employee due to his wrong pay fixation during the tenure of his service, such excess payment, cannot be recovered from such employee from his retiral dues after his retirement if the employee concerned had no fraudulent role to play in the process of his wrong pay fixation. The said decision, thus, makes clear that if such wrong pay fixation was made due to any fraudulent misrepresentation made by the petitioner and as a result excess payment was made to him during the tenure of his service, such excess payment, no doubt, can be recovered from him from his retiral dues even after his retirement.

4. In the present case, the State respondents contended in their affidavit that such wrong pay fixation was made due to the fraud exercised by the petitioner upon the concerned authority. It was further contended therein that since he received salary at a higher scale of pay which, in fact, was not admissible to him and such payment having been made because of the fraud exercised by him upon the concerned authority in the process of his pay fixation, he cannot oppose adjustment of such overdrawal in pay against his retiral dues. It is further contended by the State respondents that the petitioner failed to submit his original Training certificate which he was called upon to produce before the concerned District Inspector of School in course of settlement of his retiral dues, for its verification from the issuing authority and as a result the petitioner''s claim that he completed two years'' training course could not be effectively verified from the Institute where he prosecuted such training course. The District Inspector of School, thus, formed an opinion that the petitioner got his pay fixed fraudulently at a higher scale which was not admissible to him.

5. Thus, the State respondents justify their action in adjusting the excess payment made to him during the tenure of his service against his retiral dues after his retirement.

6. Let me now consider as to how far the State respondents succeeded in

proving their claim regarding commission of fraud by the petitioner upon the concerned authority in the process of his erroneous pay fixation.

7. Allegation of fraud is a special type of defence which requires not only to be specifically pleaded by the party alleging such fraud in the pleading by giving all particulars of such fraud in great detail but such allegations of fraud should also be proved by evidence, in order to succeed on the pleading of fraud. In the pleadings, the party alleging such fraud must specifically mention as to who committed such fraud, upon whom such fraud was committed, when such fraud was committed and where such fraud was committed. Such particulars of the fraud are also required to be proved by evidence by the party alleging such fraud in order to succeed on the defence of fraud. Such particulars of fraud, are missing in the pleadings of the instant case. The State respondents have not categorically stated as to who committed such fraud in the process of the petitioner''s pay fixation at the initial stage. They have also not named the person and/or authority upon whom such fraud was committed in the process of his initial pay fixation. The nature of the fraud which was allegedly committed by the petitioner in the process of pay fixation has also not been pleaded with all necessary particulars. Even the person, upon whom such fraud was allegedly practiced in the process of his erroneous pay fixation has also not come forward to support the allegation of fraud canvassed by the State in its affidavit. It is also not the case of the State respondents that the person concerned upon whom such fraud was practiced, can not be brought as he is now beyond the reach of the State Government. Thus best evidence has been withheld by the State respondents. The State respondents also have not stated as to when such fraud was detected for the first time. They have also not stated anything as to why such fraud could not be detected earlier, though his pay scale was revised subsequently on a number of times during the tenure of his service.

8. It is not the case of the respondents that the material documents which were required to be considered by the concerned authority before approving the petitioner''s service, were not produced by him. It is also not the case of the respondents that the service of the petitioner was approved by the concerned State authority without considering and/or verifying the relevant materials including the petitioner''s training certificate. Further it is not the case of the State respondents that the concerned State authority not only blindly fixed the pay scale of the petitioner at the time of his initial appointment but his pay was revised from time to time subsequently by the concerned authority mechanically.

9. Thus, this Court is of the view that the respondents have miserably failed to prove that the petitioner''s pay fixation was made wrongly due to fraud practiced by the petitioner upon the concerned authority. As such the State respondents are not entitled to recover the overdrawal in pay from the retiral benefits of the petitioner after his retirement. The State respondents are, thus, directed to refund the sum of Rs. 2,26,986/- which was recovered from him by way of adjustment from his retiral dues to the petitioner together with interest at the

rate of 8% per annum from the date of his retirement upto the date of actual payment thereof. Such payment should be made within twelve weeks from the communication of this order. However, current pensionary benefit will be paid to him as per his actual entitlement towards his pay and allowance as on the date of his retirement, as the State cannot be burdened with this recurring liability even after detection of an error in the process of his pay fixation. Such determination should be made by the concerned authority upon notice to the petitioner so that the petitioner may get an opportunity to defend himself on the issue regarding his actual entitlement on the date of his retirement.

The writ petition is, thus, allowed.

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

