
(2019) 09 CAL CK 0248

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5288 (W) Of 2018

Naba Kumar Nayek

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2019) 09 CAL CK 0248

Hon'ble Judges : Saugata Bhattacharyya, J

Bench : Single Bench

Advocate : D.K. Samanta, A.K. Paul, Supriya Chattopadhyay, Sabyasachi Mondal

Final Decision : Dismissed

Judgement

Saugata Bhattacharyya, J

1. At the outset on behalf of the contesting State-respondents Mr. Chattopadhyay Id. advocate has submitted that his clients do not wish to file any affidavit; therefore this Court proceeds to hear the writ petition finally on merits.

2. Writ petitioner was an assistant teacher in Joygram Janakinath High School, District- North 24 Parganas with effect from November 7, 1980 till July 8, 1992. Thereafter, he was appointed on the post of headmaster in Daulatpur Daluigachha Bharati Vidyalaya (H.S), District- Hooghly and on completion of his tenure as headmaster he retired from the said post of headmaster on superannuation on December 31, 2006. Upon counting the service of the petitioner first as assistant teacher on and from November 7, 1980 and subsequently as headmaster in another school on and from July 9, 1992 it appears that the petitioner herein rendered continuous approved service for 26 years 1 month and 25 days.

3. Two days before the superannuation of the petitioner the respondent authorities upon completing all formalities issued pension payment order in his favour vide memo no. 7524/S dated December 29, 2006 thereby releasing retrieval

benefits to him by taking into consideration the last basic pay of Rs. 12,675/- on the date of his retirement. Rs. 12,675/- was reckoned as the basic pay of the petitioner at the time of his retirement in terms of revision of pay and allowances rules of 1998 (herein after ROPA 1998).

4. Subsequently, the Government of West Bengal, School Education Department, Budget Branch by issuing memo dated February 27, 2009 revised the scale of pay of teaching and non-teaching staff of Government sponsored and aided schools up to class XII standard based on the recommendations of the Pay Commission. From the said memorandum dated February 27, 2009, which is appended to the writ petition from page 36 onwards, it appears that revision of scale of pay was notionally made effective from January 1, 2006. The revised pay and allowances of the teaching and non-teaching staff of the school was provided to be actually paid with effect from April 1, 2008. The mode of payment of arrears to the teaching and non-teaching staff of the school on revision of scale of pay as per said memorandum dated February 27, 2009 was provided under clause 1(3). The clause 1 of the said memorandum reads infra:-

"1. Date of effect:

(1) The revised scale of pay shall notionally effective from the 1st January, 2006 as recommended by the Pay Commission.

(2) The pay and allowances of an employee which may be, admissible to him in consequence of revision of pay shall be actually paid with effect from 1st April, 2008.

(3) Mode of drawal of arrears of pay:

The arrears pay to which an employee may be entitled in respect of the period from the 1st April, 2008 to 31st March, 2009 shall be paid in three consecutive equal yearly installments in cash from the year 2009-2010.

An employee, who retired after the 31st March, 2008 but before the issue of this Memorandum, shall receive the arrears of pay which he may be entitled, in cash.

An employee, who retired on any date between the 1st January, 2006 and the 31st March, 2008 shall not receive any arrears of pay in respect of the period up to the 31st March, 2008."

5. After extending the benefit of revision of pay scale to the teaching and non-teaching staff of the Government sponsored and aided schools vide said memorandum dated February 27, 2009 by a subsequent memorandum dated May 19, 2009, the School Education Department of the Government of West Bengal decided that the pensionary benefits of the retired teaching and non-teaching staff would be consolidated based on revised pay structure as per the said memorandum dated February 27, 2009; namely the West Bengal Non-Government Aided Educational Institution (Revision of Pay and Allowances) Order, 2009 (hereinafter ROPA 2009). The mode of consolidation of pension was

provided under clause 2 of the said memorandum dated May 19, 2009 and the relevant part of the said clause 2 is quoted below:-

"2.(i) The existing minimum amount of monthly pension of Rs. 650/-shall be raised to Rs. 1650/-

(ii) Those who retired prior to 01.01.2006 (irrespective of pay scale under ROPA 81, 86 or 98) are allowed 10 % increase in their existing pension with effect from 01.01.2006. This 10 % increase with effect from 01.01.2006 is notional and they will get the 'actual benefit' with effect from 01.04.2008.

(iii) Those who retired after 01.01.2006 and with the revised pay band/pay scale according to ROPA 2009 for W.B. Non-Govt. Aided Educational Institution(s), Employee(s) will get 25 % of the last basic pay as Basic Pension subject to fulfillment of the conditions laid down in para (v) below.

(iv) In the above referred in para 2 (ii), Dearness Relief will be admissible to them, adding Dearness Pension+Dearness Relief as admissible to pensioners under DCRB Scheme, 1981, as the Dearness Pay in case of these employees are not merged with their basic pay by the School Authorities as suggested by School Education Department. In case of employees mentioned in para 2 (iii), the prevailing rate of Dearness Relief as admissible to Pensioners under DCRB Scheme, 81 will apply.

(v) In all the above cases, however minimum service of 30 years would be necessary for the maximum pension of 25% of last basic pay, but for the employees retiring after March, 2009 the Service Length required for full/ maximum pension will be 20 years.

(vi) In case of length of service in 20 years, the quantum of pension would be, proportionately less as follows:

Class

Number of years of completed service

Scales of superannuation/Retiring /Invalid etc. Pension.

A Retire before 31st march. 09

10,11,12, 13 28,29,30 years & above

10/120, 11/120, 12/120, 13/120.....28/120, 29/120 30/120

B In 31st March, 09 and after

10, 11, 12, 13.....18, 19, 20 years & above

10/80, 11/80, 12/80, 13/80.....18/80, 19/80, 20/80

6. On the date of superannuation of the petitioner on December 31, 2006 as the said ROPA 2009 did not see the light of the day the petitioner was paid retrial

dues vide pension payment order issued under memo dated December 29, 2006 in terms of the pay of the petitioner fixed as per previous revision of pay and allowances rules of 1998 thereby monthly pension was sanctioned upon reckoning Rs. 12,675/- as basic pay. On implementation of ROPA 2009 the pay of the petitioner got consolidated from Rs. 12,675/- to Rs. 29,530.

7. For extending the benefit of consolidation of pension to the petitioner as per said ROPA 2009 another pension payment order was issued by the concerned respondent authorities vide memo dated November 19, 2012, at page 67 of the writ petition. It appears from the said pension payment order dated November 19, 2012 that the basic pension of the petitioner stood revised from Rs. 4,994/- to Rs. 11,634/- with effect from April 1, 2008. Such consolidation of pension was due to revision of last pay from Rs. 12675/- to Rs. 29,530/-.

8. The petitioner herein on his superannuation on December 31, 2006 first received the entire retrial dues in terms of the pension payment order dated December 29, 2006 as per ROPA 1998 and thereafter received benefits of consolidation of pension on implementation of ROPA 2009 vide pension payment order dated November 19, 2012 with effect from April 1, 2008. After receiving the retrial dues on consolidation of pension in the year 2012, petitioner has filed this writ petition on May 3, 2018, nearly six years after issuance of the second pension payment order questioning the provision under clause 1 (3) of the said ROPA 2009 whereby a teacher who retired in between January 1, 2006 and March 31, 2008 was provided not to receive any arrears of pay in respect of the period up to March 31, 2008. Challenge has also been thrown to clause 2(v) of the memorandum dated May 19, 2009 whereby it was provided that in order to get full/maximum pension (25 % of the last basic pay) an employee/teacher has to complete 30 years of service; who retired in between January 1, 2006 and March 31, 2009. The prayers (a), (b) and (c) of writ petition are set out below:-

"a) A writ in the nature of Mandamus commanding the respondents to cancel, rescind, withdraw and/or set aside the impugned clause 1(3) as contained in Government Order NO.46-SE(B)/5B-1/2009 dated February 27, 2009 (Annexure P/2 to this Writ Petition) and the Impugned clause 2(v) of Government Order No.72-SE(B)/1M-4/2009 dated May 19, 2009 (Annexure P/4 to this Writ Petition) and the impugned clause A(ii) of the Government Order No.74-SE(B)/1M-4/2009 dated May 19, 2009 (Annexure P/5 to this Writ Petition) issued by the respondent No. 1 forthwith;

b) A writ in the nature of Mandamus commanding the respondents to release and disburse the benefit of revision of pay of your petitioner made with effect from July 01, 2006 with arrears with effect from July, 2006 till December, 2006 and to make payment of full pension at the rate of Rs.14,765/- being 50 % of the last basic pay as revised in the case of your petitioner with effect from July 01, 2006 at the rate of Rs.29,530/- along with the arrears with effect from April 01, 2008 and to make payment of Additional Gratuity as per entitlement of your petitioner after adjusting the Gratuity amount already paid to your petitioner forthwith;

c) A writ in the nature of Certiorari directing the respondents to transmit and produce the relevant records of the case including the impugned clause 1(3) as contained in Government Order No.46-SE(B)/5B-1/2009 dated February 27, 2009 (Annexure P/2 to this Writ Petition) and the Impugned clause 2(v) of Government Order No.72-SE(B)/1M-4/2009 dated May 19, 2009 (Annexure P/4 to this Writ Petition) and the impugned clause A(ii) of the Government Order No.74-SE(B)/1M-4/2009 dated May 19, 2009 (Annexure P/5 to this Writ Petition) issued by the respondent No. 1 before the Hon'ble Court so that conscionable justice may be done by quashing the same;"

9. From the above narration of facts it transpires that on superannuation of the petitioner he received retrial dues in terms of ROPA 1998 upon issuance of first pension payment order dated December 29, 2006. Thereafter ROPA 2009 came into being on issuance of the memorandum dated February 27, 2009 by the Government of West Bengal, School Education Department, Budget Branch as a result thereof the pay of the petitioner stood revised thereby consolidating his pension with effect from April 1, 2008 as per clause 1(2) of the ROPA 2009. Said consolidation of pension necessitated issuance of second pension payment order vide memo dated November 19, 2012 resulting in substantial enhancement of last pay from Rs. 12,765/- to Rs. 29,530/- which upgraded the basic pension of the petitioner from Rs. 4,994/- to Rs. 11,634 on and from April 1, 2008.

10. The calculation of pension due to revision of pay as per ROPA 2009 taking into consideration the length of service of the employee/teacher was provided in a subsequent memorandum dated May 19, 2009. It was abundantly made clear as per clause 2(3) and clause 2(5) of the said memorandum dated May 19, 2009 that since the petitioner retired on December 31, 2006 having completed service of 26 years 1 month 25 days, he would not receive full/maximum pension since his length of service fell short of 30 years.

11. The petitioner accepted the benefit of consolidation of pension as per ROPA 2009 without any demur in 2012 pursuant to second pension payment order dated November 19, 2012 albeit the respondent authorities took more than 3 years' time, if counted from the date of the issuance of said memorandum dated May 19, 2009 providing the manner of consolidating pension, in issuing the said second pension payment order. During the said period of more than 3 years from the date of issuance of the memo dated May 19, 2009 till November 19, 2012 (date of second pension payment order) the petitioner did not raise any contemporaneous objection voicing his grievance against denial of the benefit of full/maximum pension on account of shortage in prescribed length of 30 years' service.

12. Even after receiving the benefits of consolidation of pension vide second pension payment order dated November 19, 2012 the petitioner slept over his right from the year 2012 till May 2, 2018 (approximately 6 years) and ultimately registered the present writ petition on May 3, 2018. On question being posed on offering explanation on inordinate delay in preferring this writ petition Mr.

Samanta, learned advocate for the writ petitioner has relied upon paragraph 17 of the writ petition. On perusal of said paragraph 17 it transpires that in order to explain the delay in approaching this Hon'ble Court the petitioner has averred that he realized the difficulty in receiving the maximum benefit of pension due to said memorandum dated May 19, 2009 on April 17, 2018. Such belated realization on April 17, 2018 by the petitioner in perceiving hindrance in receiving full benefit of pension due to clause 2 (iii) and clause 2(v) as contained in the said memorandum dated May 19, 2009 cannot be appreciated since the second pension payment order was issued far back on November 19, 2012. It appears that the petitioner suddenly woke up from slumber 6 years after receiving the benefit of consolidation of pension as per second pension payment order dated November 19, 2012.

13. The conduct of the petitioner does not inspire confidence since on his superannuation he received retrial dues pursuant to the first pension payment order dated December 29, 2006 as per ROPA 1998. Thereafter on consolidation of pension as per ROPA 2009 he accepted the additional benefits as per the second pension payment order dated November 19, 2012. The benefit of such consolidation of pension paid to the petitioner was based on the methodology provided in the memorandum dated May 19, 2009. Petitioner accepted such benefits as per second pension payment order dated November 19, 2012 without raising any objection and thereafter slept over his right for near about six years and filed the writ petition in the month of May 2018.

14. Such conduct of the petitioner does not call for exercise of discretion by this Hon'ble Court while exercising power of judicial review under Article 226 of the Constitution of India.

15. Had the right of the petitioner to receive full/maximum benefit of pension been curtailed by dint of the said clause 2(iii) and 2(v) of the memorandum dated May 19, 2009 the petitioner could have raised objection within a reasonable time first either after the issuance of the said memorandum dated May 19, 2009 or subsequently after the second pension payment order which was issued on November 19, 2012. It was open to the petitioner to approach this Hon'ble Court by filing contemporaneous writ petition against denial of full/maximum pension to him; but after enjoying the fruits of consolidation of pension in terms of ROPA 2009 as per the methodology as contained in the said memorandum dated May 19, 2009 for a period of 6 years petitioner is estopped from raising his grievance against such alleged denial of full/maximum pension with the sands of time as the claim of the petitioner has been transformed into a stale one. Articles 14 & 16 of the Constitution of India would not be attracted as it is well-known that law leans in favour of those who are alert and vigilant.

16. On the issue that the delay and acquiesce are relevant factors before the court of equity in entertaining the writ petition under Article 226 of the Constitution of India and granting relief, reliance is placed on the judgement of the Hon'ble Supreme Court reported in (2013) 12 SCC 179 (State of Uttaranchal

and Another v. Shiv Charan Singh Bhandari and others). Paragraphs 22, 25 & 28 of State of Uttaranchal (supra) are quoted below:-

"22. In BSNL v. Ghanshyam Dass (2) a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the Tribunal in 1997, they would not get the benefit of the order dated 7-7-1992.

25. In NDMC v. Pan Singh the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction."

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.

17. Reliance is also placed on another judgement of the Hon'ble Supreme Court reported in (2006) 11 SCC 464 (U.P. Jal Nigam and Another v. Jaswant Singh and Another), paragraphs 6, 12, 13 & 15. Paragraph 12 of U.P. Jal Nigam (supra) reads infra:-

"12. The statement of law has also been summarized in Halsbury's Laws of England, para 911, p. 395 as follows:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part."

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

18. On the contrary from the side of the petitioner judgement of the Hon'ble

Supreme Court reported in (2013) 111 SCC 235 (Lajja Ram and Others v. Union Territory, Chandigarh and Others), paragraphs 8, 9, 10, & 11 have been relied upon in support of the contention that the litigant can approach the writ court soon after a final decision made by the respondent authorities. The ratio decided in Lajja Ram (supra) does not support the case of the petitioner herein since the petitioner has not been able to make out a case before this Court that he filed the writ petition soon after being informed of final decision of the respondent authorities.

19. The petitioner has also relied upon paragraph 8 of the judgement of the Apex Court reported in (1983) 1 SCC 305 (D.S. Nakara and others v. Union of India) on the proposition of law that in case of pensioners of the Central Government there cannot be any mini-classification and such pensioners form a class for the purpose of pensionary benefits. The principle of law as settled in paragraph 8 of D.S. Nakara (supra) does not apply in the present case since the petitioner in view of above narrative of facts waived his right to claim the benefit after receiving the fruits of consolidation of pension in 2012.

20. Accordingly, this court finds that the petitioner has waived his right by acquiescence on remaining idle for more than 6 years after receiving benefits of consolidation of pension in the year 2012 and his claim has become stale one. Therefore, the present writ petition does not warrant any interference and the same is dismissed. However, there shall be no order as to cost.

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