

(2012) 07 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition No. 4856 (W) of 2010

Narayan Chandra Maity

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 07 CAL CK 0015

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Mukteswar Maity and Mr. Milan Kumar Maity, for the Appellant;
Tapan Kumar Mukherjee and Mr. Nilotpal Chatterjee for the State, for the
Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under art. 226 dated March 5, 2010 is seeking a mandamus commanding the respondents to pay him with interest Rs. 24,280 deducted from his gratuity amount towards recovery of overpaid salary. The petitioner was a primary school teacher. According to the provisions of the Revision of Pay and Allowances Rules that he accepted exercising option he was to retire from the services on reaching the age of sixty. Hence he was to retire on October 31, 1995. He was superannuated only on June 30, 1996. Salary, etc. paid for the period from November 1, 1995 to June 30, 1996 were deducted from the retirement benefits.

2. Though the petitioner was superannuated on June 30, 1996, the pension payment order was issued only on August 6, 2001 granting him pension as from November 1, 1995, but showing deduction of Rs. 24,280 from the gratuity towards recovery of overpaid salary. It was not stated how the overpayment took place. It has been stated only in the AO to the WP.

3. Mr. Maity appearing for the petitioner has argued that since the respondents

took the petitioner's services, salary paid to him could not be recovered.

4. Mr. Mukherjee appearing for the State has argued as follows. The petitioner was not entitled to serve during the period from November 1, 1995 to June 30, 1996. Hence salary and allowances paid for the period were rightly recovered. The pension payment order was issued in 2001 and the WP has been filed only in 2010. It is liable to be dismissed on the grounds of delay and laches.

5. The plea of delay and laches was not raised on March 9, 2010 when the WP was admitted after hearing advocate for the State. It is evident that there is delay. The question is whether the delay has caused any irretrievable prejudice to the respondents. There is absolutely nothing to suggest that the delay has prejudiced the respondents in any manner whatsoever. I am, therefore, of the view that it will not be appropriate to dismiss the WP on the grounds of delay and laches.

6. It is not the case that though the petitioner was superannuated on October 31, 1995, he forcibly continued to attend the school and discharge duty as a teacher. Nor is it the case that the respondents took his service and paid him salary month by month because of any misrepresentation on his part or fraud exercised by him. It is evident that the respondents themselves decided to superannuate the petitioner after eight months from the date he reached the age of superannuation.

7. Now the question is whether salary and allowances paid to the petitioner for the period from November 1, 1995 to June 30, 1996 could be recovered from his retirement benefits. In the AO the respondents have stated that the mistake could not entitle the petitioner to salary and allowances for the period; and this case has been strenuously argued by Mr. Mukherjee.

8. During the period in question the petitioner worked in the primary school as a teacher. He was paid salary month by month only because he discharged his duties. The respondents asserting that they were entitled to recover the salary and allowances, have not stated how they propose to compensate the petitioner whose services they took during the period in question. In my opinion, this is a totally wrong approach.

9. The respondents receiving services from the petitioner and paying him salary and allowances in consideration of such services were not entitled to recover the salary and allowances, when they were not in a position to return the petitioner's services he had given. I am, therefore, of the view that the deduction was unjust, unfair and unreasonable. *Syed Abdul Qadir and Others Vs. State of Bihar and Others*, applies. For these reasons, I allow the WP and direct the State to pay the petitioner Rs. 24, 280 with 7% p.a. interest from August 6, 2001 within six weeks from the date this order is served. No costs. Certified xerox.