
(1992) 05 CAL CK 0003
In the Calcutta High Court

Narendra Nath Biswas

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 13-05-1992

Acts Referred:

Citation : (1992) 2 ILR (Cal) 47

Hon'ble Judges : Abani Mohan Sinha, J

Bench : Single Bench

Advocate : Rabilal Maitra and Manisha Mukherjee, for the Appellant; Sukiran Biswas, for the Respondent

Final Decision : Allowed

Judgement

Abani Mohan Sinha, J.—This writ proceeding has been started as a sequel to an earlier writ proceeding which was disposed of by Monoj Kumar Mukherjee J. on certain terms. The writ Petitioner has been working as a Peon a Class IV staff of Haritala Tarak Das Vidyapith (High) School in the district of Nadia since December 30, 1972. In the earlier writ proceeding being Co. 12770(W) of 1989 it was claimed by the writ Petitioner that though he had been working in the post for long since 1972 his appointment had not been approved by the authority concerned. The application was opposed by the State Respondents. The learned Judge allowed the writ application directing the State Respondents to approve the appointment of the writ Petitioner as Peon of the School concerned with effect from January 1, 1973, and to give him all the benefits to which he is entitled. It was further directed that the order should be complied with within two months from the date of its communication. That judgment was passed on November 23, 1990. As nothing was done by the authorities concerned in compliance with that order the second writ petition has been filed by the writ Petitioner for various relief by issuance of writ of Mandamus. Initially he was paid salary at the rate of Rs. 60 per month plus Dearness Allowance as per rules which made the total of Rs. 134-50 p. per month. Later it was increased to Rs. 305-50 p. inclusive of Dearness Allowance in 1979. It is the case of the Petitioner

that even according to the old scale which was at the rate of Rs. 220-5-260-6-308-7-364-8-388 he was not paid his full salary and. accordingly he has to his credit an arrear of Rs. 31,954-95 p. which remains unpaid uptil now. The school authority moved the authorities of the Education Department. Government of West Bengal, in this regard and could obtain only an order for release of Rs. 10,000 on ad hoc basis as arrear subject to the approval of the Director of School Education, West Bengal. The letter, Annexure "j" dated March 30, 1991, given by the District Inspector of Schools (S.E.), Nadia, bears testimony to the fact. As the writ Petitioner could not obtain any relief whatsoever for release of arrear salary in his favour he moved this Court by filing an application for appropriate orders. K.M. Yusuf J. by his order dated October 11, 1991, disposed of the application with a direction that the District Inspector of Schools should forthwith issue orders to release the entire amount of Rs. 10,000 only to the Petitioner. It was further directed the District Inspector of Schools concerned and the Director of Schools Education not to interfere in any way with the order of this Court in this regard, in default they would be suitably dealt with. The learned Judge also ordered that the order should be carried out within October 31, 1991 and a report in this regard must be placed before the Court by the District Inspector of Schools on November 20, 1991 at 2 p.m. without fail.

2. The matter has been taken up by me for consideration. It is submitted by Mr. Maitra, learned Advocate representing the case of the writ Petitioner that, though he has not received any communication from the State Respondents with regard to the report, his client in fact received an amount of Rs. 10,000 on an ad hoc basis out of the total arrear in pursuance of the order of the Court. So, though this date is fixed for submission of report, it is not so much important in view of submission made by Mr. Maitra. This petition in writ jurisdiction was moved as far back as on October 4, 1991. The notice of this proceeding was served on the State Respondents, but no step has yet been taken by the State to file affidavit-in-opposition against the claim of the writ Petitioner. From the materials placed before me it appears that the State Respondents were informed of the directions of the Court in this proceeding lime to time. The State Respondents, in fact, complied with the directions by making payment of a sum of Rs. 10,000 out of the total arrear claimed by the writ Petitioner. Today when the matter has been taken up at the first instance none was present. Subsequently, Mrs. Sukiran Biswas, learned Advocate, appeared for representing the State Respondents. It is submitted by her that today the matter is fixed for submission of report and there is no direction by the Court for submission of affidavit-in-opposition or the like. In my view, this contention cannot be accepted. The State Respondents have been informed of the grievance of the writ Petitioner from long before when the first writ application was filed by the writ Petitioner. The matter was contested by the State and in presence of the State the writ petition was allowed with the orders and directions already mentioned hereinbefore.

3. As the orders and directions given by this Court in the judgment disposing of

the earlier writ petition were not complied with the writ Petitioner again moved this Court by filing the present writ petition for obtaining the consequential reliefs and benefits which were ordered to be given by the State Respondents. The judgment of the earlier writ proceeding being C.O 12770(W) of 1989 was not appealed against as such it stands as yet. The second writ petition, that is, the present writ petition, is nothing but a sequel to the first one. It is clear from the judgment referred to above that the learned Judge directed the State Respondents to approve the appointment of the writ Petitioner as Peon of the School with effect from January 1, 1973, and to give him all the benefits which he is entitled in consequence. It is submitted by Mr. Maitra that no approval has yet been received in respect of the post to which his client has been appointed with effect from January 1, 1973. Mr. Maitra has placed the xerox copy of a letter dated October 30, 1991 from the District Inspector of Schools addressed to the Secretary of the Schools to the effect that the ad hoc amount of Rs. 10,000 out of the total arrear was placed at the disposal of the Secretary for payment to the Petitioner forthwith. This letter further indicates that the Director of Schools Education, West Bengal has been moved for necessary action in the matter of approval of the appointment of the Petitioner. So I find that there is nothing to contest the case for denial of the claim of the writ Petitioner. What the Petitioner is now suffering is the delay in compliance of the order passed by the Court in the earlier with proceeding. In my view the matter brooks no delay. The approval shall be given forthwith.

4. It has further been contented by Mr. Maitra that even the Petitioner has been suffering as regards payment of full salary according to the old scale for which there has been an arrear totalling about Rs. 31,000. He has not been given the benefit of the new scale which was notionally made effective from January 1, 1986 as recommended by the Pay Commission and which was actually to be paid from January 1, 1988. There has been a mistake in the relevant prayer in the writ petition which described the revised pay scale to be effective from January 1, 1990. I have taken judicial notice of the notification No. 33-Edn(B) dated March 7, 1990 and hold that the revised pay scale would be paid to the writ Petitioner from January 1, 1988. It is clear from the order of the first writ proceeding that the writ Petitioner was to be given all the benefits of his appointment. These benefits include pay and allowance and all the benefits of revision of such pay and allowances. Accordingly I hold that the writ Petitioner is entitled to the arrear salary in the old scale for which he submitted a statement. Annex. "H", to the writ Petitioner subject to adjustment of Rs. 10,000 which has already been paid to him in pursuance of the order of this Court on ad hoc basis. So far as the revised pay scale is concerned the State authorities shall give him the benefits of such pay scale in accordance with law without further delay, preferably within three months from the date of communication of this order.

5. Before I part with this judgment I like to observe that the writ Petitioner has been forced to file successive writ petitions for getting the benefits of the order of the Court which was passed on contest as far back as in 1990 I hope this time

the State Respondents would not force the writ Petitioner to file for the third time a writ application for implementation of this order. Whenever a citizen comes to the Court for protection of his fundamental rights as guaranteed by the Constitution and through the agencies of the State and if that right is protected by the order of the Court all concerned and the State authorities should abide by it and obey it without any demur, more so when such order was passed on hearing the State and the writ Petitioner on points of facts and law. Otherwise it would be a meaningless right for a citizen. The agencies of the State which stands for protection of such right would be an agency or deprivation of such right. It is not understandable why for obtaining a particular relief a citizen has to knock at the doors of the Court even if he has obtained a judgment in his favour from it over again and over the same question. See *Chiranjitlal v. Union of India* (1950) 1 S.C.C. 248 See also *Bhadeshwar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, and *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*,

6. All these decisions clearly establish that fundamental right is solemn inalienable and cannot be waived and unstopable. The State being the guarantor of such rights must obey at the first instance if there be an order passed by the Court for protection of such right.

7. The writ petition is treated as on day's list and is disposed of as above. A writ of mandamus be issued for carrying out the directions as regards payment of balance of arrear subject to adjustment of Rs. 10,000 which was paid on ad hoc basis according to old scale and also for payment of benefits of the revised pay scale within three months from the date of this order.

8. There will be no order as to costs.

9. Let a Xerox copy of this order be given to the learned Advocate for the parties on the usual terms and conditions.

Application allowed.