
(2011) 02 CAL CK 0059
In the Calcutta High Court
Case No : Writ Petition No. 31180 of 2008

Purnendu Sekher Pahari

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Citation : (2011) 4 CHN 765

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Advocate : Soumen Kr. Dutta and Subhas Jana, for the Appellant; Sk. Oli Mahammad and Biswarupa Mitra for the State, for the Respondent

Judgement

Aniruddha Bose, J.—The writ petitioner, who was an assistant teacher of Ganeswarpur B.H. High School in the district of Purba Medinipur superannuated on 31st March, 2008. He, however, has not got his retrial benefits, except provident fund and gratuity, and that too only in pursuance of an interim order of this Court passed in this proceeding at the initial stage. The reason why his retrial benefits has not been finalized is an objection raised by the audit department of the State Government on the ground that while he was in service, he had overdrawn certain amount as part of his salary.

2. The writ petitioner is an Honours graduate in philosophy and claims to have taught in the language group in the said school. According to the State respondents, he is not entitled to salary at the scale specified for the Honours graduates.

3. The case made out in the affidavit in opposition of the respondents is that since he was teaching in the language group, his Honours degree in Philosophy was of no extra benefit and he ought to have been paid salary specified for an ordinary graduate, known in common parlance as pass graduates. The writ petitioner, however, had drawn his pay as an Honours graduate. The Memorandum of the District Inspector of Schools, in which the query was raised

addressed to the school authorities in which the writ petitioner was serving has been impugned in this writ petition. This memorandum dated 8th November, 2007, has been made Annexure "P-6" to the writ petition. This memorandum refers to audit objection over grant of honours scale of pay to the petitioners. This memorandum was issued prior to finalization of the petitioner's pension papers.

4. Appearing for the petitioner, Mr. Dutta, has relied on two decisions of the Hon'ble Supreme Court, being the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, and Syed Abdul Qadir and Others Vs. State of Bihar and Others, in support of his submissions that such an exercise at this belated stage cannot be undertaken and in the event the writ petitioner has drawn any pay beyond what he was entitled to, after such a long period of time no recovery thereof can be made.

5. Appearing for the State respondents, Mr. Oli Mahammad, submits that the petitioner lacked inherent qualification to draw the pay fixed at the Honours scale and it was always open to the State to ascertain what the writ petitioner was entitled to and fix his pay accordingly. He relied on a decision of the Hon'ble Supreme Court in the case of Pramod Kumar vs. U.P. Secondary Education Service Commission, reported in Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, and a Division Bench judgement of this Court in the case of Manindra Nath Sinha vs. State of West Bengal reported in 2006 (2) CLJ (Cal) 489. He further argued that at the time of fixation of pay under ROPA Rules, the writ petitioner while exercising option for going to the revised scale of pay had given a declaration that he would refund the amount if the same was drawn in excess by him as his pay over what was admissible to him. A copy of this option form filled in by the petitioner has been made part of annexure P-3 of the writ petition.

6. Further submission of Mr. Mahammad is that in the present case, the writ petitioner has approached this Court at a premature stage, when query was only being raised as to what would be his actual pay. He justified the action of the State in raising the query on the ground that the same was being done in compliance of the principles of natural justice. In these circumstances he prayed for dismissal of the writ petition.

7. I shall first address the question of recovery of overdrawal amount, which appears to be the basis of the Memorandum which is impugned in this writ petition. The two authorities I have referred to in the earlier part of this judgement clearly lays down the law on this point. The principle of law on this count has been laid down in the case of Syed Abdul Qadir (supra). It has been held in this case:

27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee

and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by Courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, Courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram Vs. State of Haryana and Others*, ; *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, ; *Union of India (UOI) and Another Vs. M. Bhaskar and Others*, ; *V. Gangaram Vs. Regional Joint Director and others*, ; *Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others*, ; *Purshottam Lal Das and Others Vs. The State of Bihar and Others*, ; *Punjab National Bank and Others Vs. Manjeet Singh and Another*, and *Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.* .

28. Undoubtedly, the excess amount that has been paid to the appellants--teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teaches should be made.

8. In the present case, there is no allegation that the writ petitioner was in any way instrumental in or responsible for having his pay fixed at a higher level than what he was entitled to. There is no allegation to that effect and it is apparent that here if there was any overpayment to the petitioner, the same was on account of error on the part of the respondents.

9. In this case, the writ petitioner does not suffer from any fundamental disqualification for discharging the duties for which he was paid for. It is not a case where the petitioner lacks basic qualification for being appointed as an assistant teacher. The eligibility of the writ petitioner to teach in the classes he taught is not in question. What is objected to is his entitlement to get pay at a scale higher than what he should have actually drawn.

10. In the light of these facts, I am of the opinion that there cannot be any question of making any recovery of excess amount from the petitioner at this stage. Substantial time has lapsed since the petitioner was granted the higher scale of pay. The case of Prarnod Kumar (supra) is not applicable in the facts of the present case as the Writ petitioner here does not suffer from any fundamental ineligibility. The ratio of the judgement of the Hon''ble Division Bench of this Court in the case of Manindra Nath Sinha (supra) is in respect of approval of organizer teaching and non-teaching staff in a school, and the same is not applicable in the factual context of this case.

11. In resisting the writ petition Mr. Mahammad has argued that the writ petition is premature in that the State respondents were in the process of finding out as to whether there was any excess amount drawn or not. I have come to the finding that no recovery of any excess amount ought to be allowed at this stage because from the impugned memorandum it becomes clear that recovery of excess amount was the intention of the respondents.

12. At the same time I do not think the State authorities can be prevented from ascertaining what would be the actual pay of the writ petitioner on the basis of his qualification at this stage and the fact that the petitioner has drawn pay at a particular level for a long period of time cannot denude the State respondents of their power of ascertaining the petitioner's entitlement on the basis of his qualification at the stage the impugned memorandum was issued. The petitioner was in service at that point of time. If it is found that the qualification of the writ petitioner at the time he retired did not entitle him to get the scale of pay he was drawing, then it would be within the power of the State authorities to enquire into the matter and upon giving an opportunity of hearing to the petitioner and the school authorities, the educational authorities would be at liberty to arrive at the correct level pay of the petitioner. However, if it is found that the petitioner was drawing excess pay, then his pay would be brought to his regular level only from the date of issuance of memorandum dated 8th November, 2007, which memorandum is impugned in this writ petition. Thus it shall be permissible for the State respondents to revise the petitioner's pay from that date and pension of the writ petitioner would be calculated on the basis of his last drawn pay as may have been computed by the State respondents upon undertaking the exercise referred to in the earlier part of this order. However, in view of the principles of law laid down by the Hon''ble Supreme Court in the case of Shyambabu Verma (supra) and Syed Abdul Quadir & Ors. (supra), the amount disbursed to the petitioner as gratuity and provident fund shall remain intact and it shall not be open to the respondents to reassess the said amount. The impugned memorandum being Annexure "P-6" to the writ petition is accordingly quashed.

13. The Director of School Education is given liberty to ascertain the correct pay of the petitioner and on that basis fix the retiral benefits of the petitioner. The Director of School Education shall complete this exercise within a period often

weeks from the date of communication of this order upon giving the writ petitioner and the school authorities opportunity of hearing. The Director of School Education shall be at liberty to take assistance of any officers or Education Department of the State for this purpose. The decision taken by the Director of School Education shall be communicated to the petitioner and other concerned authorities within a further period of two weeks thereafter, and the pension and other benefits, if any, shall be released forthwith thereafter.

14. The writ petition shall stand disposed of in the above terms.

15. There shall, however, be no order as to costs.

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