
(2009) 08 CAL CK 0025
In the Calcutta High Court
Case No : Writ Petition 7262 (W) of 2008

Rabindra Nath Sarkar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Citation : (2009) 08 CAL CK 0025

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Jamini Kr. Banerjee and Biswajit Banerjee, for the Appellant; Kanai Lal Samanta and Tapasi Sinha, for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.—Service of the petitioner as an Assistant Teacher in Hindi (Language Group) in Baruipara Rakhal Vidyapith (hereafter the School) was approved with effect from 20.12.1971. He has since retired from service on attaining the age of superannuation in May, 2008.

2. On or about 6.2.2008 i.e. three months prior to the petitioner's retirement, the District Inspector of Schools (Secondary Education), Hooghly vide Memo No. 1128 addressed to the Headmaster of the School ordered that necessary steps are required to be taken at an early date for recovery/refund of overdrawn salary by the petitioner and furnished to his end along with original challan. This order of the District Inspector forms the subject matter of challenge in the present petition.

3. It is not in dispute that while in service, the petitioner had acquired Diploma in English Language and Training (hereafter DELT) sometime in 1979.

4. In so far as fixation of pay of teachers of Government and non-Government Secondary and Higher Secondary Schools having DELT, the Deputy Secretary to the Government of West Bengal, Education Department, Budget Branch vide G.O. No. 171-Edn (b) dated 15th May, 1984 had laid down as follows:

Sub; Fixation of pay of teachers of Govt. and non-Govt. Secondary & Higher Secondary Schools having D.E.L.T. In continuation of G.O. No. 403(2)-Edn. (B) dt. 7.9.83, the undersigned is directed to say that the teachers of Govt. and Non-Govt./aided Secondary and Higher Secondary Schools, who successfully completed the training course at the Institute of English, Calcutta (DELTA course) upto the session ending on or before December, 1983, were allowed to draw two increments in their respective scales of pay from the date of resuming their duties in the respective institutions.

It has now been reported that the Pay of some Junior teachers who have obtained such Diploma in English Language Training after 4.4.81 (i.e. after introduction of the revised scales of pay) has been fixed at a stage in the revised scales higher than the pay of those senior teachers who have obtained such Diploma prior to 1.4.81 (i.e. while they were in the unrevised scale). In the circumstances, the Governor is pleased to direct that the pay of the teachers who have got such Diploma (D.E.L.T.) prior to the introduction of the revised scales of pay (w.e.f. 1.4.81) shall first to be fixed in the revised scale as per normal rules and such pay shall finally be fixed after granting one or two additional increments as the case may be on the said revised scale ensuring that such incumbents are allowed third stage benefit i.e. at

(i) Rs. 600/- for teachers having Post Graduate degree in the scale of Rs. 550-1400/- (Revised).

(ii) Rs. 540/-for teachers having Honours Degree in the scale of Rs. 500-1360/- (Revised).

(iii) Rs. 480/-for teachers having Pass Graduate Degree in the scale of Rs. 440-1170/- (Revised).

The teachers whose pay has already been fixed at the said stage or above, will not be granted any additional increment. No arrear claim of such teachers prior to 1.5.84 shall be entertained.

This order issues with the concurrence of the Finance Deptt. vide their U.O. No. 301 Gr. J. (PIC) dt. 4.5.84. The Accountant General, West Bengal and the Pay & Accounts Officer, Calcutta Pay & Accounts Office have been informed.

5. In terms of G.O. dated 15.5.1984, the petitioner having with Post-Graduate qualification of B.Ed as well as DELTA had his basic pay fixed at Rs. 600/- in the scale of pay of Rs. 550-1470/- Close on the heels of the said Government Order, another order was issued by the Director of School Education, West Bengal, contained in Memo No. 1569 (16) GA dated 21st September, 1985. In view of reported anomalies in connection with fixation of pay of teachers having DELTA, it was observed therein as follows:

Sub : Fixation of pay of a M.A. passed teacher with D.E.L.T. before 1.4.81.

In connection with the subject mentioned above the undersigned has to state

that some reports of anomalies in connection with the fixation of pay of the teachers with DELT before and after 1.4.81 are received in this Directorate and therefore this guideline should be followed to sort out the anomalies.

The fixation of pay of a teacher with DELT before 1.4.81 and 10 years" teaching experience on the date of option should be made in the following manner in terms of Government Order No. 408 - Edn (B) dated 13.9.1983 and No. 171 - Edn (B) dated 15.5.84.

The pay of the above category of teachers should be fixed at Rs. 600/- on 1.4.81 in terms of Government Order No. 171 - Edn (B) dated 15.5.84 and then one incremental benefit should be extended to them provided they complete 10 years" teaching experience on the date of option in terms of Government Order No. 492(6) Edn (B) dated 26.10.81 to make it Rs. 625/-.

In this connection it may be mentioned that before issue of the Government Order No. 171 - Edn (B) dated 15.5.84, it was noticed that due to fixation of pay in terms of Government Order No. 372 - Edn (B) dated 31.7.81 the pay of Jr. teacher with DELT after 1.4.81 has been higher than that of the Sr. teachers with DELT before 1.4.81 and that is why the Government Order No. 171 - Edn (B) dated 15.5.84 has been issued to protect the interest of the Sr. teachers.

6. It is alleged that the Managing Committee of the School pursuant to the order dated 21.9.1985 fixed the basic pay of the petitioner at Rs. 625/-. However, subsequent by Government Order No. 1157 (17) 6A dated 10.5.1988, it was provided as follows:

Sub: Fixation of Pay of M.A. passed teacher with D.E.L.T. before 1.4.81.

The undersigned has to state that this Dte's Circular No. 1569(16) g.a. DT. 21.9.85 ON THE ABOVE NOTED SUBJECT IS HEREBY CANCELLED. The fixation of Pay of the teachers who got D.E.L.T. diploma prior to 1.4.81 should be read in terms of G.O. No. 171 Edn (B) dated 15.5.84. Fixation of Pay of such category of teachers made in terms of the above said Circular may please be submitted to this office for further examination. A copy of the G.O. No. mentioned above is also enclosed for ready references.

Though the petitioner's basic pay ought to have been refixed in terms of order dated 10.5.1988, the same was not so refixed and the petitioner continued to draw pay in excess of his entitlement.

In the meantime, however, the petitioner exercised option in terms of relevant Revision of Pay and Allowances Rules. The anomaly in respect of pay fixation of the petitioner went unnoticed and it was only at the fag end of his career that the District Inspector of Schools issued the impugned order directing the School to effect recovery of overdrawn pay from him.

Mr. Banerjee, learned Senior Counsel appearing for the petitioner contended that the petitioner not being at fault cannot be penalised. Relying on the decision of

the Apex Court in *Syed Abdul Qadir and Ors. v. State of Bihar and Ors.* reported in (2009) 1 Supreme 163 he urged the Court to set aside the impugned order.

Mr. Samanta, learned Counsel appearing for the State respondents invited the Court's attention to the form of option filled up by the petitioner and placed heavy reliance on the under noted declaration given by him:

Declaration - I hereby undertake to refund to the Government any amount which may be drawn by me in excess of what is admissible to me on account of erroneous fixation of my pay in the revised scale of pay as soon as the fact of such excess drawal comes to my notice or is brought to my notice.

He submitted that since the petitioner had voluntarily declared to refund any amount that would later on be found to be overdrawn by him he urged the Court to set aside the impugned order.

According to him, the petitioner is bound by such declaration and cannot now raise any question with regard to the impugned order of the District Inspector.

This Court has heard learned Counsel appearing for the parties. It is no doubt true that in view of the declaration given by the petitioner, the Government would normally have the right to recover any amount paid to him in excess of his entitlement. However, the question is, how long would the declaration bind the petitioner. In the present case, the petitioner was not instrumental in drawing pay in excess of his entitlement. There was error on the part of the school authority as well as on the part of the State respondents in not ensuring that the petitioner receives salary only as per his entitlement. The declaration given by the petitioner quoted above in the considered view of this Court, would be operative not for an indefinite period but for a reasonable period of time since the date it was signed. The State respondents cannot be allowed to utilize the declaration, on the verge of the petitioner's retirement, for the purpose of effecting recovery of the overdrawn amount. Had the State respondents been vigilant enough, the fact of overdrawal by the petitioner could have been detected much earlier. More than 9 years after signing of such declaration has elapsed, which is quite a long time.

It has to be remembered that the petitioner must have chalked out his future plans and programmes keeping in mind the salary received by him. If he is made to refund the same at this stage, the same would work out immense prejudice to him in the December years of his life. As has been held in the decision in *Syed Abdul Qadir (supra)*, erroneous fixation of pay by the concerned authorities on the basis of incorrect interpretation of a rule/order or on application of a wrong principle are the exceptions where the employee concerned may not be saddled with the liability to refund amount drawn in excess by him. It would be inequitable. This Court, therefore, holds that the petitioner is not liable to refund the excess pay drawn by him. In the result, the impugned order of the District Inspector stands set aside.

However, since the fact of overdrawal is admitted by the petitioner, this Court would further hold that the petitioner would be entitled to retiral benefits not on the basis of the last pay drawn by him but on the basis of fixation of such pay in the scale of pay in accordance with the Government Order dated 10.5.1988 and corresponding revisions of pay. The State respondents shall compute the retirement benefits due and payable to the petitioner without taking into consideration the amount overdrawn by him and ensure that he receives the same without unreasonable delay but not later than six months from date of receipt of a copy of this judgment and order.

7. The school authority is directed to cooperate with the State respondents wholeheartedly.

8. The writ petition stands allowed to the extent mentioned above without order for costs.

9. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites therefore.