(2006) 09 CAL CK 0005

In the Calcutta High Court

Case No : Writ Petition No. 2135 of 2002

Rahul Sinha APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 21-09-2006

Acts Referred:

General Financial and Accounting Regulations — Section 38

Citation : (2006) 2 ILR (Cal) 512

Hon'ble Judges : Arun Kumar Mirtra, J

Bench : Single Bench

Advocate : Ranjit Chatterjee, for the Appellant; Liha Majumder, for the Respondent

Judgement

Arun Kumar Mitra, J.—The writ Petitioner being a retired employee of West Bengal University of Animal and Fishery Sciences, (WBUAFS) made,a claim regarding his retrial benefits which has been withheld by the authorities/The Petitioner attained superannuation at the age of 60 years as Professor,. Department of Animal Genetics, West Bengal University of Animal and Fishery Sciences on April 30, 1998. The initial appointment of the Petitioner was under Kalyani University in 1966. Thereafter when Bidhan Chandra Krishi Viswavidyalay was set up in 1974 he was transferred to BCKV. This transfer was effected as provided in Section 49 of BCKV Act. The Section 51 of the BCKV Act provided the terms and conditions of service under which the Petitioner was to hold Office in BCKV and the same would not be less disadvantageous than what he was entitled to in Kalyani University i.e. under the new University the Petitioner was to get the benefits at par with the benefits which he was getting earlier.

2. In 1995, the West Bengal University of Animal and Fishery Sciences (shortly termed as WBUAFS) was established by statutory provision. Thereafter by an order dated 15, June 1995 all departments of Animal Husbandry and Veterinary Sciences of BCKV were closed and the Petitioner along with other teaching and non-teaching staffs working under the Faculty of Veterinary and Animal Sciences

in BCKV were placed under the administrative control of the newly established West Bengal University of Animal and fishery Sciences under the provisions of Section 1 (3) read with Section 2 (3) of the Act. The appointed day was 2nd January, 1995. In view of the provisions of Section 40 of the new Act of 1995 the Petitioner was also protected as regards the terms of srvices after his transfer to the new University.

3. It is alleged by the Petitioner that though the Petitioner has exercised option in favour of retention in BCKV under proviso to Section 40 (1) of the new Act but his such option was not allowed. He was to move to the newly set up University as Professor.

4. In short the claim of the Petitioner in this writ petition is as follows:

Release of his retrial benefits as early as possible (pension, gratuity and commutation vlue of pension along with interest for delayd payment).

5. It is further alleged by the Petitioner in the writ petition that it is admited position that Service Book and prsonal file of the Petitioner have not been completed nearly five years after his retirement. It is also alleged that duplicate Service Book was not handed over to the Petitioner and as such the claim is:

a) Arrears of pay w.e.f. 01/01/1996 taking into three increments to which the petitioenr became entitled under 1996 UGC pay-scale (two increments due to Phd. degree an one further increment which has been cleared by the Executive Council of BCKV).

b) Employer''s contribution in Contributory Provident Fund (CPF) on the arrears pay payable to the Petitioner on account of fixation of pay in new UGC Scale.

c) Unpaid portion of leave salary, the Petitioner being formerly employed under Kalyani University is entitled to eight months'' leave salary under G. O. No. 360 (10) Edn. (U)dtd. 11/14/2000 read with BCKV Act and WBUAFS Act.

d) 20% of arrear House Rent Allowance due to the Petitioner upon fixation of pay in revised scale.

e) Non-Practising Allowance (NPA) for the month of April 2002.

6. The Petitioner has made serious allegation to the extent that Respondents, instead of settling the retrial benefits of the Petitioner, after four years of his retirement wrongly, illegally and in a mala fide manner caused communications to be addressed by the Registrar (Acting) BCKV and Asstt. Comptroller, BCKV to the Registrar, WBUAFS and copies of the said communications were forwarded to the Petitioner. In these communications it was alleged that a sum of Rs. 11,59,565/- has been worked out provisionally as outstanding advances against the writ Petitioner and further held that the personal file of he writ Petitioner can be transmitted to WBUAFS only after finalization of the total amount of outstanding advances lying against the Petitioner. The Petitioner has made those annexure as annexure ''G'' and ''H'' respectively to the writ petition.

7. On receipt of the copy of said communications the writ Petitioner addressed separate letters dated 04, July 2002 to the Respondents WBUAFS and BCKV dealing with the allegations made against him.

8. It was submitted by the Petitioner that the Petitioner was* released from service by BCKV unconditionally by order dtd. 15, June 1995 and the option exercised by him to remain in BCKV was not accepted.

9. The Petitioner also submitted in answer to those communications that the alleged unadjusted advances were all sanctioned by the Vice Chancellor and not drawn by the Petitioner personally. The issue of alleged advances pertained to the period 1976 to 1983 and the Respondents are not entitled to hold up payment of the retiral dues by taking shelter under the said plea -particularly, since the employment with BCKV had ceased seven years ago on 02, January 1995 and he has also retired from the services of the transferring University on more than four years ago before issuance of the impugned notices.

10. It was further submitted by the Petitioner that statutory Government audit of theaccounts of the Dean of Faculty of Veterinary and Animal Sciences of BCKV had taken place year after year and in the audit reports there was never any mention of any unadjusted advaces -in fact, the same has been pointed out by the Head of the Depoartment of Animal Genetics and Breading in his letter dated 22, August 2002 and this had been annexed by the writ Petitioner marking as annexure-''L''

11. The Petitioner was issued "No- Dues" certificate by the Dean of the Faculty of Animal and Veterinary Sciences, WBUAFS after his retirement and before he proceeded on re-employment. This certificate has also been annexed to the writ petition marking to annexure-''D''.

12. The statement of the Petitioner in this regard has not been denied by any of the Respondents in their affidavits.

13. The Respondents received the letters dated 4 July 2002 under the registered post but they -did not reply to the same and contents of the said letters remained uncontroverted.

14. It was also alleged by the Petitioner that none of the Respondents (except BCKV) has affirmed any affidavit-in-opposition to the writ petition and in the affidavit-in-opposition of-BCKV the relevant paragraph dealing with the question of alleged unadjusted advances have been verified as submissions.

15. On the other hand BCKV in paragraph 4 of the affidavit has stated that since the writ Petitioner was transferred from BCKV to the WBUAFS along with the entire faculty of BCKV there is no question of BCKV issuing "No Dues" certificate to the Petitioner.

16. The writ Petitioner also disclosed the correspondence exchanged between the Registrar, WBUAFS, Dean of Faculty of Veterinary and Animal Sciences, WBUAFS

and the Head of the Department of Animal Genetics and Breeding (AGB) and has prayed for production of the reply given by the Dean to the Registrar upon receipt of the aforesaid letter from the Head, Deptt. of AGB.

17. The Petitioner stated that u/s 40(4) of the WBUAFS Act, the Respondent i.e. the West Bengal University of Fishery Sciences is liable to pay pension, Gratuity and other terminal benefits to the employees transferred from BCKV.

18. The petitionr movd the instant writ petition before Hon''ble Justice Barin Ghosh on 04, October, 2002 and His Lordship directed payment and in compliance of His Lordship''s order three cheques were handed over to the Petitioner''s learned Advocate along with statements which have been annexed by the Petitioner to the Supplementary Affidavit which has been affirmed1 by or in Pursuance of His Lordship''s order. In terms of His Lordship''s order the Petitioner submitted a further reply dated 16 October 2003. In the said latter the Petitioner repeated his contentions and submissions contained in his previous letters dated 04 July, 2002.

19. The Petitioner alleged that in spite of the direction of the Court the Respondents have not given any reply dealing with the letter submitted by the writ Petitioner dated 16, October 2003.

20. It is also alleged by the Petitioner that the Respondent BCKV has not filed any affidavit dealing with the supplementary affidavit filed by the Petitioner. In the supplementary affidavit the Petitioner dealt with extensively regarding the payment made to him and corresponding statements furnished therewith.

21. The Petitioner has claimed three additional increments - two under the State Govt''. Circular dated 28, July 1999 for his Phd. degree and one increment which has been wrongly and illegally deducted by Respondent WBUAFS by altering the date of his annual increment after pay revision.

22. Circular dated 28 July, 1999 annexed to the affidavit-in-opposition of WBUAFS is effective from 1, January 1996 and under the said Circular a teacher will be eligible for two advance increments as and when he acquires a phd. degree in his service career. The Petitioner has retired on 30 April 1998.

23. In their opposition, WBUAFS has denied that the Petitioner is entitled to the benefit of two Phd. increments under the Govt. circular dated 28/07/1999 and they relied on UGC circular of August, 2001, three years after the retirement of the Petitioner and this has no application since the Petitioner acquired Phd. degree in 1978 and'' became Professor in 1983. The Petitioner has claimed Rs. 1.2 lakh as arrear pay w.e.f 01 January 1996 under the revised pay scale taking into account said three increments.

24. The Petitioner further alleged that since the writ Petitioner has been transferred from BCKV to the newly established WBUAFS along with the entire faculty of BCKV, there is no question of BCKV issuing no-dues certificate to the writ Petitioner.

25. It is also alleged that by letter dated 22, August 2002 the Head, AGB has informed the Dean that Professor R. Sinha, who was the Head of the Department in BCKV about twenty years ago handed over charges to his successor Dr. A. K. Chatterjee (now retired). There is no record that this department has received any audited objection till then. The department is not having any secretarial assistance since the Junior Assistants and the Technical. Assistants were retained by BCKV. Many old records had been kept in Animal Genetics and Breeding, Kolkata Campus which is now conkirted to Vice Chancellor''s residence.

26. It is alleged by the Petitioner that no rule/circular has been produced or cited empowering the University to withhold any part of the retirement dues or alleged irregularities.

27. The Petitioner further alleged that Hon''ble Justice Barin Ghosh on 30/09/2002 directed the Respondent WBUAFS to produce in Court the cheques for the payment relating to his retiral dues as also the Pension Payment Order of the writ Petitioner on the next date of hearing.

28. The Petitioner further alleged that BCKV has admittedly, allowed its employees to retain by order dated 22,Mrach 2001. WBUAFS annexed a circular dated 28, July 1999 which is effective from 01, January 1996. Under the said cicular a teacher will be eligible for two advance increments as and when the acquires Phd, degree in his service career and this is applicable to the Petitioner since he has retired on 30 April, 1998 but in their affidavit-in-opposition the Respondent WBUAFS has denied that the Petitioner is entitled to the benefit of two phd. increments under the Govt. circular dated 28, July 1999. By setting up a UGG circular 2001, WBUAFS is alleging that the Petitioner comes under the said 2001 circular. The Petitioner retired in 1998. He acquired Phd. in 1978, became Professor in 1983. The Petitioner claimed Rs. 1.2 lakhs as arrear pay w.e.f. 1, January 1996 under the revised pay scale taking into account the said three increments. Summarily, under the order of Hon''ble Justice Barin Ghosh some amount towards retiral benefit has been paid to the Petitioner and the rest amount has been alleged to be disputed and the Respondents have said that this is a disputed a question of fact which cannot be decided in this writ petition.

29. The Petitioner also claimed Rs. 3.8 lakhs on account of his CPF due to him for his services in Kalyani University in BCKV between 1986 and 1995 with interest @ 20% p.a. for delayed payment.

30. The Petitioner further claimed leave salary of two month which has been deniend to him.

31. In the supplementary affidavit the Petitioner gave a statement of particulars regarding his claim which is as follows:

32. On behalf of Respondent Nos. 6 and 7 opposition was filed. In the said opposition it has been stated that the Petitioner was appointed as Lecturer in the Department of Animal Husbandry and Dairy Science under the University of

Kalyani. Subsequently, after bifurcation of the University of Kalyani the Petitioner was transferred to BCKV w.e.f.1 st September, 1974. The Petitioner thereafter was appointed as a Reader in the faculty of Veterinary and Animal Science, of BCKV. He was promoted to the post of professor in the Department of Animal Genetics and Breeding w.e.f. 01, January 1983. The Petitioner was in the position of Dean, Faculty of Veterinary and Animal Science under Bidhan Chandra Krishi Viswa Vidyalaya. Subsequently; after establishment of West Bengal University of Animal and Fishery Sciences, all departments under the Faculty of Veterinary and Animal Science of BCKV were transferred top the new University and the Petitioner along with other employes, who were attached to the said Faculty were placed under newly established University.

33. In the opposition the Respondents stated that the Petitioner was in remployment after superannuation in the year 1998. The Faculty of Veterinary and Animal Sciences of BCKV had been transferred under the newly establishd West Bengal University of Fishery Sciences in the year 1995. So, question of issuing ''no-dues'',.cetif|cate by BCKV does not arise.''

34. It has further been stated that on scrutiny of the statement of advances it appears that a total amount of Rs. 11,87,675=1 OP. is still remained unadjusted which was dawn by the Petitioner.

35. The Respondent Nos. 6 and 7 in their opposition also stated that according to Chapter 6 Sub-Section 38 of the General Financial and Accounting Regulations, BCKV, the amount remains unadjusted till date and that is Asistant Comptroller/ Respondent No. 7 issued a lelter on 04, June 2002 to the Registrar, WBUAFS by sending lists in respect of advances which are lying unadjusted. The Respondents, therefore, stated that said advance must be adjusted.

36. On behalf of the Petitioner, a reply was given. In the reply the Petitioner stated.that the West Bengal University of Animal Husbandry and Fishery Sciences in collusion with BCKV tried to mislead the Court by distorting two facts.

37. The Petitioner further stated that his claims are just and legitimate and the Petitioner reiterated the statement.

38. The Petitioner further stated that his last employer i.e. WBUAFS is therefore, in any event liable.to pay leave salary and other retiral benefits. He further stated that the authority cannot hold up any portion of the same on the plea of non-issuance of ''no-dues'' certificate from BCKV.

99. The Petitioner sated that befoe grant of reemployment to him, ''.no-dues'' certificate had been issued by Dean of Faculty and Veterinary sciences,,WBUAFS which faculty has been transferred from BCKV and which is the last employer.

40. The Petitioner then stated that after the order of last by the High Court, three cheques were issued to the Petitioner as part of his retiral benefits but the rest part has been withheld for reason unknown. In the end the Petitioner has stated as to how his claims are legal and in his support the Petitioner annexed

the cicular dated 22, March 2001 of BCKV and the circular of 5th Central Pay Commission dated February 27th, 1999.

41. The Learned Counsel for the Petitioner submitted that proceeding under the garb of disciplinary proceeding cannot be permitted after the employee has ceased to be in service, In this regard the Petitioner relied on a decision reported in State Bank of India Vs. A.N. Gupta and Others, The Learned Counsel for the Petitioner mainly relied on the observations made in paragraph 16 of this decision, the relevant extract of which is quoted herein below -

Proceeding in the garb of disciplinary proceedings cannot be permitted after an employee has ceased to be in the service of the Bank as Service Rules do not provide for continuation of disciplinary proceedings after the date by superannuation.

42. Mr. Chatterjee, appearing for the Petitioner submitted that here also no rules provide for continuation of any proceeding after superannuation. He submitted that actually this is a punishment without any disciplinary proceeding which cannot be done under the law.

43. On the same principle the Learned Counsel for the Petitioner relied on a decision of the Hon''ble Apex Court reported in (State of U.P and Anr. v. Shri Krishna Pandey''2) Mr. Chatterjee relied on the observations made in paragraph 5-of this judgment.

44. The learnd counsel then submitted that withholding of retiral beneifits to adjust disputed claims is not permissible and in that case the authority should initiate legal action to recover the claim. The Learned Counsel in this regard relied on the decision reported in Gorakhpur University and Ors. v. Dr. Shitla Prasad Nagendra and Ors. AIR 1996 SC 1665. The Learned Counsel for the Petitioner laid stress on the observations made in paragraph 5 of this judgment which is quoted hereinbelow:

5. We have carefully considered the submission on behalf of the respective parties before us. The earlier decision pertaining to this very University, reported in S.N. Mathurs is that of a Division Bench, rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in R. Kapur which in turn, relied upon earlier decisions in Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, and Som Prakash1. this Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in thieir hands and any delay in stettlement and disbursement whereof should be viewed seriously and dealt with severly by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits/ Such is the position with reference to amounts due towards president fund, which is rendered immune from

attachment and deduction or adjustment as against any other dues from the employee. In the context of this; mere reliance on behalf of the Appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the Appellant any further. Reliance placed for the Appellant University on the decision reported in Wazir Chand does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting Respondent in this case is that the University authorities regularly accepted the rent at normal rates every month from the Petitioner till the quarters were vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the Respondent, who is in service of the University, no decision seems to have been taken and communicated though it is now claimed in the court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18-7-1994 and the actual sgch waiver made Jn the case of several others cannot be easily ignored. The lethargy shown by theauthorities in not taking any action according to law to enforce their right to recover possession of the quarters from the Respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the Respondent renders the claim for penal rent not only a seriousiy disputed or contested.claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive.manner by adopting-the different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarters and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the Respondent itself was again seriously disputed and to some extent justifiably too, the Appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident-fund amounts indisputable due and unquestionably payable to the Respondent before us. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to, have vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court.

45. Mr. Chatterjee also submitted that delay in payment.of retiral benefits is not only illegal but also mala fide. Mr. Chatterjee submitted that on servral occasions the Hon''ble Apex Court has awarded interest. @ 18% or lump sum

compensation for,-the delay. He relied on two decisions reported in AIR 2000 SC 3513a and Mohd. Zameeruddin Siddiqui Vs. Executive Council, A.M.U. and Another, On the same principle he also relied on a decision reported in Suresh Chandra v. State, of U.P. and Ors. 1988 (4) SLR 527 and laid stress on the observations made, in paragraphs 13, 14 and 15 of this judgment.

46. The Learned Counsel also relied on Chaju Ram Vs. The State of Jammu and Kashmir, on the same principle

47. The Learned Counsel ''for the Respondents submitted that the authorities. have released the undisputed amount due to the petitionr towards hfs retiral benefits and the rest portion is''disputed and not only it-is a money dispute but also there are serious''disputes regarding the facts and it is the'' settled position of law that disputed question of fact cannot be decided by a Writ Court.

48. Now, summary of submissions of both the sides are that whether the amount claimed by the Petitioner is permissible or not.

49. Let me fitrst look into the submission 6T the reaspondent authorities. It is riot a fact that the authorities have disputed that the Petitioner worked as Lecturer, as Reader, thereafter as Professor and at certain point of time a Dean of Faculty, Years of working are also not disputed. Then the question of disputed fact cannot arise - rather it can be termed that disputed quetion of law, applicability of a circular cannot be a question of fact and this must be a question of law-whether disputed or undisputed. Here, three things come up; one is the Petitioner allegedly took some advance and the authoity wants to adjust this towards his retiral benefits; second is whether the circular of 1995 issued by Bidhan Chandra Krishi Viswavidyalaya of UGG circular of 2001 is applicable to the Petitioner and thirdly whether the authority can delay the retiral benefits or withhold the retiral benefits in the name of recovery of dues.

50. The Answer to the first question is given in the decision of the Hon''ble Apex court reported in State Bank of India v. A. N. Gupta(Supra)-wherein the Hon''ble Apex Court in unambiguous language has observed that after retirement employer employee relation ceases and if the authority is to recover some amount from any employee,the authority is to take recourse of law i.e. legal recovery is permissible. Very well, the authority can file money suit but the authority cannot withhold any amount claiming to be unadjusted amount.

51. 1995 circular in its paragraph 1,2,3 and 4 states in the manner as follows -

1. The newly established West Bengal University of

Animal and Fishery Sciences will protect the scales of pay, emoluments and other financial benefits of the employees so transferred as they have been enjoying as employees under Bidhan Chandra Krishi Viswavidyalaya

2. The benefit of Contributory Provident Fund will be continued. The sum already accumulated under their respective P. F. Account in Bidhan Chandra Krishi

Viswavidyalaya shall be transferred as per University rules to their individual P.F. Accouts in the newly established Univrsity in due course/as early as possible, subject to adjustments repayment etc, on loans advances etc. from that account and following mutually agreed procedure.

3. The period of past service recognised by BCKV shall be recognised by the newly established University.

4. The individual acumulation of leave in the leave Accounts on the date immediately proceeding the date of transfer will be allowed to be carried over to the new University.

52. From the language of the circular itself it appears that the Petitioner''s claim comes under the coverage of this circular. 2001 circular of UGC cannot be made applicable in case of the Petitioner''s claim inasmuch as the Petitioner retired in the year 1998 and 2001 circular of UGC is not retrospective. It has been once summitted on behalf of the authority that the Petitioner got reemployment for four years but that does not ipso facto change the position of applicability of the BCKV circular and in this regard the contention of the Petitioner appears to be correct.

53. In the instant case the authority under Court''s order without preferring any appeal and accepting the Court''s order paid certain amount in three chequest towards his retiral benefits but that the authority withheld the rest amount claiming it to be disputed. If at all, any sum is due from the employee''s previous retirement, the authority can file a money suit to recover the same and cannot withheld or adjust the said amount towards his retiral benefits. In this, case the authority being a statutory body is open to act in accordance with law and they should release, the benefits due to the Petitioner. Summarily, the Petitioner is entitled to unpaid portion of C.P.F. He is also entitled to refund - the amount deducted from commuted value of pension, arrear of pension and contribution value upon due fixation of pay, unpaid leave salary, arrears obtained w.e.f. 1. January 1996 under 1996 UGC pay scale, employer''s contribution on C.P.F. and nothing else.

54. The authorities are directed to pay the Petitioner the above amount mentioned in the tabular statement at page 10 above within a month from the date of communication of the order.

55. The writ petition is disposed of with the above observation and/or direction.

56. There will be no order as to costs.

Urgent xerox certified copy, if applied for, be supplied to the parties expeditiously upon usual undertaking.