
(2012) 04 CAL CK 0088
In the Calcutta High Court
Case No : Writ Petition No. 11153 (W) of 2010

Rama Ghosh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 04 CAL CK 0088

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Pratap Kumar Sen, for the Appellant; Jayanta Banerjee for the State, for the Respondent

Judgement

Hon''ble Mr Justice Jayanta Kumar Biswas

1. The petitioner in this WP under art. 226 dated May 19, 2010 is seeking the following principal relief:

"a) A writ in the nature of mandamus commanding and/or directing the respondents authorities, their men/agent/subordinates to forthwith withdraw and/or cancel the impugned memo no. Pen-355/DDA(E) MSD dated 12.08.2004, as at Annexure P-9 to this petitioner."

Annexure P9 referred to in prayer (a) is at p.93. It is a statement of wrong pay fixation overpayment to the petitioner during the period from April 3, 1972 to April 1, 2005. The overpaid amount was recovered from the petitioner's retirement benefits. The recovery was shown in the pension payment order dated July 12, 2005 (at p.92).

2. The petitioner was working as a secondary school teacher. On reaching the age of superannuation she retired from services on July 31, 2005. Until she received the pension payment order, she had never been told that due to wrong pay fixation she had been overpaid.

3. Feeling aggrieved by the recovery of overpayment the petitioner brought this WP belatedly. Accepting the explanation for delay, this Court admitted the WP on June 10, 2010 when the respondents were directed file opposition. The respondents contesting have chosen not to file any opposition.

4. Mr Sen appearing for the petitioner submits that the impugned recovery of overpayment is arbitrary and not permissible in law. Mr Banerjee appearing for the State has submitted that particulars incorporated in the document at p.93 will show that during the period in question the petitioner was overpaid due to wrong pay fixation.

5. The question of recovery of overpayment from the retirement benefits has been examined by the Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, . The law laid down by the Supreme Court is that no recovery from the retirement benefits is permissible, unless the wrong pay fixation was because of any misrepresentation of the employee or fraud exercised by him.

6. The respondents not filing opposition did not make such allegations against the petitioner. The petitioner's pay was fixed from time to time under the several ROPAs concerned. The pay fixations were duly approved by the District Inspectors of Schools. No law empowered any authority to review the pay fixation decisions.

7. It is only after the pension case was sent to the office of the Director of Pension, Provident Fund and Group Insurance, West Bengal that his office reopened the pay fixations from April 3, 1972 to April 1, 2005. There is no law that empowered the office of the Director to reopen and review the decisions of the District Inspectors of Schools approving the petitioner's pay fixations from time to time under the several ROPAs.

8. It is, therefore, evident that the actions taken by the office of the Director of Pension, Provident and Group Insurance are without jurisdiction and arbitrary. The petitioner is entitled to refund with interest. For these reasons, I allow the WP and order as follows. Within four weeks from the date this order is served, the State shall refund the recovered amount, recalculate the retirement benefits on the basis of the last pay drawn, pay retirement benefits arrears, with interest at the rate of 7% per annum from August 1, 2005 till the date of actual payment. No costs. Certified xerox.