(2019) 08 CAL CK 0134

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 7521 (W) Of 2019

Samir Kumar Banerjee APPELLANT

Vs

State Of West Bengal & Ors RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0134

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Tanuja Basak, K. M. Hossain, Ranjan Saha

Final Decision : Disposed Of

Judgement

Moushumi Bhattacharya, J

The petitioner claims refund of an alleged overdrawn amount of Rs.77,718/- which was deposited by the petitioner through treasury challan under what the petitioner claims to be "compelling circumstances".

The petitioner's case, as submitted by learned Counsel is that the petitioner was appointed as Headmaster in the Kensily Emdadia High School (H.S.), Usthi, South 24 Parganas, in 3rd August, 2013 and his appointment was duly approved by the District Inspector of Schools (S.E.), South 24 Parganas, vide memo dated 25th February, 2015.

It is the case of the petitioner that the school where he was appointed as Headmaster was upgraded to a Higher Secondary school on 21st May, 2015 and the petitioner became the Headmaster of the said school. The petitioner made an application for higher grade pay and 3 per cent additional increment for becoming the Headmaster of the Higher Secondary school. The petitioner was allowed higher grade pay as well as 3 per cent increment. The letter from the said school to the D.I. received on 4th December, 2015 records the application of the petitioner for the higher grade pay and the 3 per cent increment.

The petitioner was however compelled to deposit the sum of Rs.77,718/- to the State Government through treasury challan and the concerned entry shows the amount as "overdrawn salary for the period 1.7.2015 to 30.9.2018". This amount was deposited on 15th November, 2018. After depositing such amount, the Pension Payment Order was issued in favour of the petitioner on 10th December, 2018. The petitioner retired on 30th November, 2018.

The subject matter of challenge in the present writ petition is the objection taken by the Director of Pension, Provident Fund and Group Insurance which is as follows: "The teacher was not entitled to get any additional increment due to upgradation of the school as HS School as per SE Department's order no.... (theorder has not been mentioned in the objection taken)". "The objection continues,..." he was entitled to get the Additional Grade Pay of Rs.200/- from the date of upgradation as H.S. School. Pay in..... Service Book should be recast.

Overdrawal is to be calculated and refunded to treasury ...."

In this context, Counsel for the petitioner relies on a Notification no.1003-SE(S)/5P-129/12 dated 18th May, 2015 which contains the following clauses:

"The question was raised that in G.O. No. 30-SE(B) dt. 10.02.2010 and G.O. No. 161-SE(B) dt. 08.10.2009 it was stated that the school upgraded in between 01.01.2006 and 27.02.2009 (Publication of ROPA) the Headmaster would be entitled additional increments from the date of such upgradation. But no clear instruction is given if the school upgraded after 27.02.2009.

The Headmasters/mistress of the High Schools who has been appointed as HM in an upgraded (10+2) H.S. after 27.2.2009, will be entitled to get 3% increment and additional grade pay in pursuance to the order no.46-SE(B)/5B-1/09 dated 27.2.2009, Clause 11 and order No. 181-SE(B) dated 8.10.2009."

Counsel submits that by reason of the above Notification, since the concerned school was upgraded on 21st May, 2015, the petitioner as Headmaster would be entitled to 3 per cent increment and additional grade pay under the orders dated 27th February, 2009 and 8th October, 2009 as referred to in the said Notification. Counsel also relies on State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015)4 SCC 334 and in paragraph 18 of the said decision where it was held that recovery from the retired employees or the employees who are due to retire within one year is not legally permissible. Counsel submits that in this case the petitioner retired on 30th September, 2018 and the deposit was made to the treasury challan on 15th November, 2018.

Counsel for the State relies on a Notification no. 292-SL/SS-294/12 dated 22nd March, 2017 under which an earlier Notification (No.1003) dated 4th December, 2014 was withdrawn. The relevant part of the said notification is set out below:

"Having considered the issue raised by the Deputy Director of School Education, (G.A.), West Bengal in connection with memo No.-1003-SE(S)/SP-129/12 dated 4/12/2014, this is to clarify that ROPA 2009 and other related orders issued by this Department with the concurrence of other departments have not proposed any additional increment in favour of the Head Masters of Higher Secondary schools upgraded after 27/02/2009. Only additional grade pay @ Rs.200/- has been allowed to the HM of the Higher Secondary schools upgraded after 27/02/2009.

Hence, I am directed to inform that no additional increment can be allowed as per ROPA, 2009 and accordingly, Memo No. 1003- SE(S)/SP- 129/12 dated 4/12/2014, stands withdrawn. The Commissioner School Education and concerned DI of schools are requested to act accordingly."

Counsel submits that under Notification No.1003-SE(S)/5p-129/12 dated 4th December, 2014, the Headmasters/ Headmistresses of high schools who have been appointed as HM in an upgraded (10+2) H.S. after 27th February, 2009 were entitled to get 3 per cent increment and additional grade pay in pursuance to the orders dated 27th February, 2009 and 8th October, 2009. Counsel submits that by reason of the subsequent Notification dated 22nd March, 2017, the petitioner is not entitled to refund of the amount paid on 15th November, 2018 through treasury challan.

I have heard Counsel for the parties.

The dispute in this writ petition centers around the effect of the three Notifications relied on by Counsel. First, the Notification dated 4th December, 2014 which had allowed headmasters of upgraded schools to get 3 per cent increment and additional grade pay in terms of two earlier orders dated 27th February, 2009 and 8th October, 2009. The next Notification is dated 18th May, 2015 which takes into account the two orders of 27th February, 2009 and 18th October, 2009 and provides for the same benefit to the Headmasters and Headmistresses of high schools who were appointed as HMs in an upgraded school after 27th February, 2009 namely to 3 per cent increment and additional grade pay. The third Notification, being the one which relied on by Counsel for the State dated 22nd March, 2017 withdrew the first Notification dated 4th December, 2014. From the relevant part of this Notification, it would appear that the notification dated 18th May, 2015 has not been mentioned or considered. Second, the Notification of 22nd March, 2017 does not clarify whether the said Notification would have retrospective effect namely and would apply to the headmasters who have already obtained the benefit of the earlier Notifications of 4th December, 2014 and 18th May, 2015. In fact, the wording of the Notification dated 22nd March, 2017 makes it apparent that the notification would only apply prospectively. Even otherwise, in the view of this Court, it would inequitable if the Headmasters who had been given the benefit of 3 per cent increment and higher grade pay under the earlier Notification dated 4th December, 2014 and enjoying such benefit for at least three years or more, would suddenly be called upon to refund the amount received by them pursuant to the 2014 and 2015 Notifications. The relevant part of the Acquittance Roll of the petitioner of February, 2016 contains an endorsement of the additional 3 per cent increment and additional grade pay due to upgradation of the school. The inequity of this kind of situation have been reflected in Rafiq Masih (supra) where the Supreme Court prohibited recovery from the retired employees within one year from the date of retirement of such employees.

In this case, the petitioner retired on 30th September, 2018 and the deposit was made on 15th November, 2018 after which the Pension Payment Order was issued to the petitioner on 10th December, 2018.

It is clear from the sequence of the facts that the petitioner was compelled to deposit the amount of Rs.77,718/- as a condition for the Pension Payment Order being issued to the petitioner. The compelling circumstances under which litigants are required to deposit sums of money as a condition precedent for the P.P.O. being issued have been noticed and frawned upon in a number of decisions of this Court.

In view of the above discussion, the objection taken by the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal, being respondent no.6, cannot be sustained. The respondent no.6 is accordingly directed to refund the amount of Rs.77,718/- to the petitioner which was deposited by the petitioner through treasury challan within a period of three weeks from the date of communication of this order but not later than 31st August, 2019. The concerned respondent is also directed to release the pension benefits to the petitioner in accordance with the last pay drawn by the petitioner before the date of his retirement.

W.P. 7521 (W) of 2019 is disposed of in terms of the above.

Urgent certified website copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.