(2012) 03 CAL CK 0002

In the Calcutta High Court

Case No : Writ Petition No. 28738 (W) of 2008

Sikha Ghosh APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 5 CHN 168

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Subrata Bose and Nabanita Pal, for the Appellant; Susovan Sengupta, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under article 226 dated November 19, 2008 is seeking the following principal relief:

a) A writ of and/or in the nature of Mandamus commanding the respondents, each one of them their men, servants, agents and/or subordinate to refund the amount of Rs. 1,24,570/- recovered vide Memo No. 869/S dated 4.2.2004 being annexure "P-1" herein, to the petitioner along with the interest @ 18% per annum forthwith;

The petitioner was a secondary school teacher. On reaching the age of superannuation she was to retire from service on May 31, 2004. The provisions of the West Bengal Recognised Non-Government Educational Institutions Employees (Death-cum-Retirement) Benefit--Scheme, 1981 were applicable to her.

2. The District Inspector of Schools, Howrah was the petitioner''s pension sanctioning authority. According to the procedure laid down in the scheme her pension papers were to be submitted one year in advance of the date of her anticipated retirement. All concerned were to follow the procedure laid down by an Order of the Budget Branch of the School Education Department of the

Government of West Bengal No. 88/SE(B)/EES/OIB/IM-9/98 dated May 26, 1998.

3. Presumably, following the procedures laid down by the provisions of the Scheme and the Government Order, the head of the institute prepared the petitioner''s pension papers and submitted them to the District Inspector of Schools. On the basis of the sole document produced by the fifth respondent with his opposition dated December 14, 2011 it can be said that the pension papers were signed by the petitioner on November 18, 2002.

4. On reaching the age of superannuation the petitioner retired from service on May 31, 2004. Her pension payment order was, however, issued on February 4, 2005. In the order of a sum of Rs. 1,24,570 was shown as deduction from the retirement benefits. It was stated that the deduction was on account of "Overdrawal in Pay Etc." Feeling aggrieved, she belatedly approached this Court. However, the WP was entertained and the fifth respondent has filed an opposition.

5. The case of the fifth respondent will appear from his opposition dated December 14, 2011, sub-para. (e) of para. 4, relevant part of which is quoted below:

e) It is stated that the writ petitioner had overdrawn an amount of Rs. 1,24,570/- (Rupees One Lakh twenty four thousand five hundred seventy only) during his service period. The said amount was allowed to the writ petitioner in excess erroneously and the same was calculated on 22nd December, 2003 i.e. well in advance before her date of retirement (31.05.2004) on the basis of calculation of Headmistress of the School and the same was also duly countersigned by the concerning D.I. of Schools (S.E), Howrah." Sub-paragraph (f) of para 4 of the fifth respondent''s opposition dated December 14, 2011 is quoted below:

f) It is stated that the petitioner on 18th November, 2002 had executed a declaration under the Civil Service Regulation whereby and wherein it was declared by her that any overdrawn amount by him, if found during scrutiny of the pension papers should be adjusted from her gratuity and pension. A copy of the said declaration dated 18th November, 2002 is annexed herewith and marked as Annexure ''O/1''.

6. Nothing has been stated anywhere how and why the alleged overpayment took place. Particulars of the overpayment in question have not been given. The petitioner was never given any opportunity of showing cause. It is not disputed that her pay fixed from time to time by the School Authority was duly approved by the District Inspector of Schools.

7. No law empowered the District Inspector of Schools or the Director of Pension, Provident Fund and Group Insurance, West Bengal to review the decisions taken by the District Inspectors of Schools concerned approving the petitioner''s pay fixation under the several ROPA Rules during the term of her service.

8. The document produced by the fifth respondent contains three declarations

signed by the petitioner. The last is that the respondents would be entitled to recover overpayment, if any, from retirement benefits. The declaration was not a requirement of any law. There is nothing to show that the petitioner was ever asked to give the declarations. No-one was empowered to obtain a declaration for recovery of overpayment.

9. It is, therefore, evident that the respondents deducted the amount illegally and arbitrarily. While processing the petitioner''s pension papers, it appears, in the name of scrutiny the office of the Director of Pension, Provident Fund and Group Insurance re-opened and reversed several pay fixations that all had attained finality long ago.

10. The office of the Director of Pension, Provident Fund and Group Insurance unilaterally held that the petitioner''s pay had been wrongly fixed, and that as a result she was paid pay, etc. in excess of her lawful entitlement. This seems to be the fundament of the decision to recover the amount in question from her retirement benefits.

11. Mr. Bose appearing for the petitioner has relied on the decisions of this Court in Kalyan Kumar Chattopadhyay Vs. The State of West Bengal and Others, , The The State of West Bengal and Others Vs. Sri Harekrishna Sardar and Another , Pulin Behari Maity vs. The State of West Bengal & Ors., (2010) 4 WBLR (Cal) 118 and an Order of the Director of Pension, Provident Fund and Group Insurance No. 739/DPPG dated July 19, 2010.

12. Mr. Sengupta appearing for the State has strenuously argued in justification of the recovery. The basis of his argument is the declaration dated November 18, 2002 signed by the petitioner authorising the respondents to deduct overpayment, if any, from her retirement benefits.

13. The decisions cited to me and the order of the Director fully supports the petitioner''s case. The principle applicable to such a case as this has already been laid down by the Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others,

14. It is nobody''s case that the petitioner''s pay was ever wrongly fixed in consequence of any fraud exercised by the petitioner or any misrepresentation on her part. The respondents could recover overpayment, if any, from the petitioner''s retirement benefits only if the wrong pay fixation was for any fraud exercised by her or for any misrepresentation on her part.

15. For these reasons, I allow the WP and order as follows.

16. Within four weeks from the date of communication of this order the State shall refund Rs. 1,24,570, recalculate retirement benefits on the basis of last pay drawn, pay pension, gratuity, etc. arrears and refix pension. Interest shall be paid on all payable amounts from June 1, 2004 upto the granted period at the rate of 8% per annum, and thereafter, if occasion arises, at the rate of 18% per annum until payment. No costs. Certified xerox.