
(2016) 10 CAL CK 0022
In the Calcutta High Court
Case No : W.P. No.18568(W) of 2014

Sk. Akbar Alias Sk. Akbor

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Citation : (2017) 2 WBLR 636

Hon'ble Judges : Debi Prosad Dey, J.

Bench : Single Bench

Advocate : Mr. Swatarup Banerjee, and Mr. Puspall Chakraborty, Advocates, for the Appellant/Petitioner

Final Decision : Allowed

Judgement

Debi Prosad Dey, J.—The petitioner was appointed as assistant teacher on 25th September, 1981 and the petitioner retired on superannuation from service on 30th April, 2009. The authorities admittedly granted increment as well as the benefit of further increment towards career advance scheme after completion of 10 and 20 years of service. The pension payment order(vide P4) was issued in favour of the petitioner on 4th January, 2010 and the petitioner for the first time came to know that Rs.36501/- has been deducted from his retiral benefits on account of over-drawl of pay. The petitioner submitted a representation paying for refund of the said amount but the authorities did not pay any heed to such representation. Despite filing application under Right to Information Act, the authorities simply replied that a sum of Rs.36501/- has been deducted from the retiral benefits of the petitioner on account of over-drawl of pay by the petitioner.

2. Being aggrieved thereby the petitioner has filed this writ application praying for issuance of a writ of mandamus commanding the respondents to refund the amount to the tune of Rs.36501/-, which has been deducted from the retiral benefits of the petitioner.

3. The state respondents have admitted in their affidavit in opposition that the

said amount has been deducted from the retiral benefits of the petitioner on the ground of erroneous fixation of basic pay at Rs.1305/- instead of Rs.1275/-. It is the case of the state respondents that due to wrong fixation of basic pay with effect from 01.06.1992 till the date of retirement, the petitioner drew a sum of Rs.36501/- in excess. No reason has been assigned in the affidavit in opposition as to who is responsible for drawing such increment by the petitioner or that the such excess amount of increment was given to the petitioner because of any misrepresentation or fraud on the part of the petitioner.

4. Learned Advocate appearing on behalf of the petitioner has relied on the following decisions of the Apex Court reported in 2009(3) SCC 475(Syed Abdul Quadir v. State of Bihar) and 1994(2) SCC 521(Shyam Babu Verma v. Union of India).

5. It has been observed in 1994(2) SCC 521(Shyam Babu Verma v. Union of India) at paragraph 29 as follows:

"On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."

6. It has also been observed by the Supreme Court in 2009(3) SCC 475(Syed Abdul Quadir v. State of Bihar)(Supra) as follows:-

"Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant

teachers should be made."

7. It is therefore crystal clear that due to negligence on the part of the state authority such amount has actually been credited in favour of the petitioner and the petitioner is in no way responsible for drawing such incremental benefit. Secondly, such increment was never disbursed in favour of the petitioner on account of some misrepresentation or fraud perpetrated by the petitioner.

8. In that view of this case and having regard to the principle of law as has been decided by the Apex Court in the decision referred to herein above, I do find substantial justification and merit in the writ petition filed by the petitioner. The state authorities cannot deduct such amount from the retiral benefits of the petitioner and deduction of amount to the tune of Rs.36501/- from the retiral benefits of the petitioner is not only illegal but also lacks jurisdiction on the part of the state authorities.

9. The respondents authorities particularly the Director of Pension, Provident Fund, and Group Insurance, Government of West Bengal and the concerned Treasury Officer i.e. respondents no.2 and 4 in particular are directed to pay / refund the aforesaid over-drawl amount of Rs.36501/- with interest at the rate of 8 percent per annum to the petitioner to be calculated from the date of retirement till the date of refund without any further delay but positively within a period of 8 weeks from the date of communication of this order failing which, additional interest at the rate of 2 percent shall be payable to the petitioner. With the aforesaid direction, this writ petition is allowed and accordingly disposed of.

10. No order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible