
(2018) 05 CAL CK 0175
In the Calcutta High Court
Case No : Writ Petition5168(W) of 2018

Sk. Jamaluddin

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 14-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 326
West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 — Rule 19(5)

Citation : (2018) 05 CAL CK 0175

Hon'ble Judges : SAMAPTI CHATTERJEE, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharyya, Syed. Mosihar Rahaman, Sanghamitra Nandy

Final Decision : Disposed Of

Judgement

The petitioner seeks retirement benefit. It is contended on behalf of the petitioner that, although the petitioner was convicted in a criminal case under Sections 326, 307, 302 and 34 of the Indian Penal Code, he is entitled to retirement benefits. He had reached the age of superannuation on July 31, 2017. The criminal case was initiated in 2012 and till now, not framed. The petitioner was suspended for his custody for 48 hours and he was enlarged on bail on 03.08.2012 and the School authority withdraw the suspension and the petitioner was promoted to the post of Head Teacher. The petitioner continued to serve till retirement on 31.07.2017. No Disciplinary proceeding was initiated at any point of time by the School authority.

Relying upon 2014 Volume 2 Calcutta High Court Notes (Cal) page 103 (Anandi Prasad Mahato v. State of West Bengal) and the judgment and order dated July 9, 2015 passed in W.P. No.9890(W) of 2015 (Prafulla Chandra Mahato

v. The State of West Bengal & Ors.) it is submitted that, pendency of a criminal case is not a valid ground for withholding of terminal benefit of a Government employee. The State is represented.

It is contended on behalf of the State that, the petitioner is governed by the West Bengal Recognized NonGovernment Educational Institution

Employees (Death-cum-Retirement Benefit) Scheme, 1981. In chapter V Rule 19(5) thereof the petitioner is not entitled to pensionary benefits during

the pendency of a judicial proceedings. The provisions of West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-

Retirement Benefit) Scheme, 1981 have not been considered in Anandi Prasad Mahato (supra). I have considered the rival contentions of the parties

and the materials made available on record.

The petitioner was a primary teacher. He was an accused in Shyampur P.S. Case No.109 of 2012. The petitioner say that subsequent to the order of

suspension, he had applied for withdrawal of suspension in view of the grant of bail and the petitioner was allowed to join duty by order dated

14.01.2013. The petitioner had reached the age of superannuation on July 31, 2017. He had made a representation dated December 07, 2017 for

release of terminal retirement benefits. Terminal benefit has not been disbursed to the petitioner.

The State has not demonstrated that the criminal proceedings against the petitioner has any nexus with the duties required to be discharged by the

petitioner as a teacher. Chapter IV of the West Bengal Recognized Non-Government Educational Institution Employees (Death- cum-Retirement

Benefit) Scheme, 1981 provides that an employee governed thereby shall be entitled to pension subject to satisfactory service and either criteria laid

down therein. Two conditions are required to be mandatorily fulfilled by an employee governed by the Scheme of 1981 to receive pension. One is

satisfactory service and the other is the period of service qualifying such employee to be entitled to pension.

Chapter V of the DCRB Scheme, 1981 deals with the rate of pension. Clause 19(5) of the DCRB Scheme, 1981 provides as follows:-

19(5) Final pension, gratuity etc., shall not be sanctioned to an employee against whom department/judicial proceedings have been instituted/

continued. In case of misconduct of the pensioner, the pension sanctioning

authority has the power to withhold pension or reduce the pension. Where any department or judicial proceeding is instituted or where a departmental proceedings is continued against an employee who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying services up to the date of retirement, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed on suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon. Payment of this provisional pension shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Much Stress has been placed on the user of the word "judicial proceedings" in Clause 19(5) of the DCRB Scheme, 1981. It is contended on behalf of the State that, judicial proceedings in Clause 19(5) means any judicial proceedings. The moment any judicial proceedings is pending against an employee governed by the DCRB Scheme, 1981, such employee will not be entitled to full pensions subsequent to such employee attaining the age of superannuation. Clause 19(5) of Chapter V of the DCRB Scheme, 1981 has to be read in the context of the entirety of the scheme. The scheme provides for payment of pension to employees guided therein subject to such employee fulfilling the eligibility criteria. The eligibility criteria requires satisfactory service and a qualifying period of service. Judicial proceedings contemplated in Clause 19(5) of the DCRB Scheme, 1981 has to be read in such context. Any judicial proceedings pending against an employee will not disentitle such employee governed under the DCRB Scheme, 1981 to full pension.

If the contention of the Advocate for the State is taken to its logical conclusion then any civil proceedings, such as a suit for partition filed against such employee by his co-sharers or a title suit with regard to dispute relating to

demarcation of the boundary line of a property will bring such employee within the ambit of Clause 19(5) of the Scheme of 1981 thereby disentitling such employee to full pension. This in my view, is not the scheme. The judicial proceedings referred to in Clause 19(5), therefore, has to be read in the context of a proceedings in relation to the satisfactory service of such employee during his service tenure. This is highlighted when one considers the user of the words "departmental/ judicial/ proceedings" as used in the clause. Departmental proceedings used in such clause would necessarily mean proceedings against such employee in matters relating to the discharge of his duties as such employee. The judicial proceedings referred to in such clause would also mean a judicial proceeding in relation to the discharge of the duties as an employee. Such judicial proceedings must have a nexus with the duties discharged by the employee in the normal course of his employment.

Anandi Prasad Mahato (supra) is of the view that where a person has been convicted in a criminal proceedings and such criminal proceedings has no nexus with the service of the petitioner coupled with the fact that there is no allegation during the service of the petitioner and no disciplinary proceedings having been initiated during the tenure of such employee, withholding of terminal benefits is without authority.

In the facts of this case, the criminal proceedings is in question has no nexus with the service of the petitioner. There is no allegation of pecuniary loss caused to the Government by the petitioner during the tenure of his service. The authorities did not initiate any disciplinary proceedings against the petitioner during his entire service tenure. In Prafulla Chandra Mahato (supra) the Court had allowed disbursement of terminal benefits on the ground that departmental proceedings had not been initiated and that the criminal proceedings was not on the account related to his service. In such circumstances, the petition succeeds.

The respondents will release the all terminal benefits of the petitioner arising out of his service within a period of 6 weeks from the date of communication of this order to them together with interest at the rate of 8 per cent per annum on arrears for the period from the date when the terminal benefits became due and payable till the date of his actual payment. This rate of interest is allowed taking under consideration that

nationalized banks award interest at such rate in respect of fixed deposits. W.P. No.5168(W) of 2018 is disposed of. No order as to costs. Urgent

photostat certified copy of this order, if applied for, be given to the parties on the usual undertaking.