
(2010) 03 CAL CK 0034

In the Calcutta High Court

Case No : CAN No. 1287 of 2008 in Writ Petition No. 17371 (W) of 2001 and
C.P.A.N. No. 1197 of 2002

Sri Bholanath Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Citation : (2010) 2 CALLT 541

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : D.K. Banerjee and Avijit Chakrabarty, Swapan Kumar Dutta and
Dipankar Das Gupta, for the Appellant; Samiran Giri, for the Respondent

Judgement

Dipankar Datta, J.—A retired school teacher by presenting this petition dated November 28, 2001 seeks release of service benefits including retiral dues which, according to him, have been withheld by the concerned respondents to add to the agony suffered by him right from May, 1987. It is, however, not in dispute that during the pendency of the present proceedings, dues towards gratuity and arrear pension have been released. He is also in receipt of monthly pension. What survives for decision is whether he is entitled to arrear salary amounting to Rs. 11,76,242/-, provident fund dues and interest on delayed payment of gratuity and pension.

2. The genesis of the dispute giving rise to this petition may now briefly be noticed from the petition.

3. The petitioner joined as Assistant Teacher of Nandanpur Rupchand Academy (hereafter the school) on July 20, 1964. He could not attend to his duties since July 7, 1987 allegedly because of intimidation of a member of the Managing Committee of the school Sri Kalobaran Manna. Several notices were issued asking him to show cause for unauthorized absence. He replied to such notices. Ultimately another notice dated August 8, 1988 was issued against the petitioner, which was challenged by him by instituting writ proceedings before this Court. He

prayed for quashing of such notice together with direction for release of unpaid salary and allowance since May, 1987. The writ petition was allowed by judgment and order dated May 10, 1991. The impugned show cause notice was declared ultra vires being violative of Regulation 28(8) of the Management Rules, 1969. The Superintendent of Police, Hooghly, the Officer-in-charge, Khanakul Police Station and the District Inspector of Schools (S.E.), Hooghly (hereafter the DIoS) were directed to take immediate steps for resumption of duties by the petitioner as an Assistant Teacher of the school. They were further directed to ensure that the members of the Managing Committee do not interfere in functioning of the petitioner as Assistant Teacher. The Superintendent and the DIoS were also directed to ensure that the petitioner's right to work in the school is not interfered with or adversely affected by any acts of the school authorities or their associates. The Officer-in-Charge was directed to post a police picket to prevent the Managing Committee or outsiders so that the petitioner does not face any difficulty to resume his duty or discharge his function. The DIoS was also directed to pay all the arrear salaries and allowances since May 1987 in favour of the petitioner within a month from date of communication thereof. A further direction for payment of current salary and allowance on proper revision of pay and re-fixation without default also followed.

4. The DIoS issued Memo dated October 10, 1991 requesting the Secretary of the school to comply with the Court's order and pay the petitioner his admissible dues. The school, however, in the meantime had preferred an appeal against the judgment and order dated May 10, 1991 and hence awaited the result of the stay application filed in connection therewith. The stay application came up for consideration before the Hon'ble Division Bench presided over by the Hon'ble the Chief Justice on April 8, 1992 when, inter alia, the following order was passed:

It may be pointed out that the writ petitioner made a grievance that he is continuing as an Assistant Teacher of the school in question but he is not being allowed to join the school and perform his duties.

According to the appellants, no resistance had been offered on their behalf and the writ petitioner for the reasons best known to him, has been absenting from the school.

In this background, there is no question of staying the direction given by the learned trial Judge to the police authorities to extend help the writ petitioner-respondent so that he can join the school and perform his duties.

We also direct the writ petitioner-respondent to perform his duties assigned to him during the pendency of the appeal in the school in question.

Accordingly, prayer for interim relief is refused and the application is rejected.

5. Upon such rejection the petitioner claims to have made several attempts to resume duty but the same proved abortive. He filed contempt petition whereupon Rule was issued, registered as C.R. No. 3167 of 1992.

6. On June 5, 1996, the Hon"ble Division Bench while considering the contempt petition passed the following order:

In pursuance of an order of the learned Single Judge, who directed the opposite parties to permit the applicant to join as an Assistant Teacher in Nandanpur Rupchand Academy (H.S.C.) P.O. Nandanpur, District-Hooghly. Against the said order an appeal was preferred and the appeal court did not stay the operation of the order of the learned Single Judge. Non-compliance of the order of the learned Single Judge and of the Division Bench, a contempt notice was issued by the Division Bench and the matter is pending. Before we go into the merit or hearing the contentions of the parties we are of the opinion that first the opposite parties should permit the applicant to join as Assistant Teacher in the Institution in question though the counsel appearing for the opposite parties states that he never objected for joining of the applicant in the institution as Assistant Teacher in question. The parties are at variance over this point whether the applicant did not join or the opposite parties did not permit him to join. Before we take note at it, who is at fault for the same, we are further of the opinion that the applicant should be permitted to join, as an Assistant Teacher in the Institution in question one week after the reopening of the summer vacation and the applicant will take assistance of the District Inspector of Schools (SE) Hooghly. A copy of this order passed today may also be served on the concerned official who will ensure that the applicant is permitted to join as an Assistant Teacher within one week from the date of reopening of the summer vacation and in case there is any hindrance in the way of the D.I. of Schools (SE) permitting the applicant to join in the said school, it will be open for the said authority to take appropriate steps in this regard. The D.I. of schools (SE) will also inform the Management that on the date of joining along with the applicant when he want to propose to accompany the applicant, within one week from the date of the re-opening of the summer vacation.

The applicant will submit a report within two weeks of the said joining to this Court so that appropriate orders may be passed in this contempt application. Office is also directed to serve an order directly to D.I. of Schools (SE) Hooghly through Registered Post for which the applicant will bear the expenses and deposit the cost in the office within a week from today. The applicant is also permitted to supply a copy of this order to the D.I. of schools (SE).

Let this matter appear on 9th July, 1996 as for orders.

7. The petitioner by his letter dated June 24, 1996 addressed to the DIoS requested him to ensure that he can resume duty. Simultaneously, he wrote a letter, of even date, to the Assistant Inspector of Schools (S.E.) Arambagh, Hooghly Sub-Division (hereafter the AIoS) placing on record that he had come to learn on June 19, 1996 that the AIoS would not be available in his office prior to June 24, 1996 (Annexure P- 15 to the petition). It appears from the endorsement made by the AIoS on the said letter that the petitioner was called upon to contact him on June 26, 1996 at 1.30 p.m.

8. Upon receipt of the petitioner's letter, the DIOs by memo dated June 25, 1996 addressed to the AIOs requested him to extend assistance to the petitioner for resumption of his duty in the school in the light of the order dated June 5, 1996. The DIOs called for a detailed report regarding the petitioner's resumption of duty.

9. The petitioner allegedly visited the office of the AIOs on June 26, 1996 but was asked to meet him again on July 1, 1996 at 2 p.m. for fixing up date of joining in service in the presence of the Headmaster of the school. This is revealed from the letter dated July 1, 1996 written by the petitioner wherein a request was made to inform him in writing the date and appropriate arrangement for joining service so as to obey and give effect to the order of Court (Annexure P17 to the petition).

10. On such letter (Annexure P- 17 to the petition), the following hand-written note dated 1.7.1996 of the AIOs was endorsed:

As per verbal discussion with H.M., the H.M. told me that he shall come on 1.7.1996 at 2 p.m. but he did not come for fixing up joining date.

11. The petitioner again visited the office of the AIOs on July 2, 1996 and submitted a letter indicating therein the fact of the Headmaster's failure to visit the office of the AIOs to fix up date of resumption of duty by him. He made a fervent request to let him know the date and time and arrangements made in respect of joining service in writing by that day (part of Annexure P- 18 to the petition).

12. The petitioner made a similar request on the following day by his letter dated July 3, 1996 (also part of Annexure P-1 8 to the petition).

13. Since the petitioner's attempt to resume duty despite visiting the office of the AIOs time and again for fixing date and time failed to evoke any positive response either from the side of the AIOs or from the side of the Headmaster of the school, he addressed a letter dated July 4, 1996 to the DIOs for his information and necessary action in respect of refusal of the AIOs to receive further application from the petitioner since July 3, 1996 on the subject of his resumption of duty. The letter, sent by registered post with A/D, is part of Annexure P-19 to the petition.

14. On that date itself i.e. July 4, 1996, the AIOs addressed a letter to the petitioner and called upon him to intimate the exact date and time of his proposed joining in the school so as to enable the AIOs to accompany the petitioner and to render all possible cooperation and assistance for resumption of his duty (also part of Annexure P- 19 to the petition).

15. The petitioner responded by his letter dated July 12, 1996 (Annexure P-20 to the petition). He expressed his reservation in respect of the conduct of the AIOs and ultimately apprised the AIOs that he is ready and willing to join service on any date and time to be fixed by the AIOs and communicated to him in writing.

The AIOs duly received the letter but he did not respond.

16. Thereafter on February 3, 1997, the DIOs had submitted a report before the Hon"ble Division Bench. The last four paragraphs of the report read as follows:

It reveals from the letter vide No. 305/Aram dated 04.07.1998 of the Assistant Inspector of Schools (S.E) Arambagh Sub-Division that he requested the petitioner to intimate him the exact date and time of his proposed joining in the School so as to enable him to accompany and render all possible co-operation in this regard. A Xerox copy of the said Memo is annexed herewith and marked as "B".

It is learned from Assistant Inspector of Schools (S.E.) Arambagh Sub- Division that inspite of his best effort the petitioner concerned did not cooperate him by intimating the exact date and time of his joining. As a result the Assistant Inspector of Schools concerned could not do anything for his joining in the School till date. The petitioner also did not inform me the date and the time of his proposed joining in the School as yet.

It also reveals from the letter of the Headmaster dated 06.07.1996 that petitioner did not also come to School to join in the light of Hon"ble Court's order. A Xerox copy of the Headmaster's letter dated 06.07.1996 is annexed herewith and marked as Annexure "C".

In the circumstances and facts stated above I beg most respectfully to submit before your Lordships that I have no intention to violate the Hon"ble Court's order and I have the highest regards to this Hon"ble Court. If it is construed that there is any violation of the Hon"ble Court's Order that any graciously be treated as unintentional and for this I tender my unqualified apology to this Hon"ble Court.

17. Significantly, the DIOs in his said report did not refer to the petitioner's letter dated July 12, 1996 referred to above.

18. C.R. 3167 of 1992 thereafter came up for hearing before the Hon"ble Division Bench and by order dated 11.1.2000 the rule was discharged with the following observations:

From the above it will be apparent that directions had been issued including granting protection to the applicant to enable him to join in the post and perform his duties.

In the light of the above as also in view of the conflicting versions, a disputed questions of fact arises as to whether it is the applicant herein who has failed to join in the post or whether the school authorities have not allowed him to join in the post. We are of the considered opinion that in this proceeding, sitting as we are in contempt jurisdiction cannot properly decide the matter, more so, when appropriate directions in that behalf had already been issued by the court as noted (supra) by orders dated 5th June, 1996.

Accordingly, we do not find that there is any wilful or deliberate violation of the orders of this Court complained of. However, it shall be open to the petitioner to seek such appropriate remedies as may be opened to him in law. Let it be placed on record that we have not gone into the merits of the contentions urged before the court as we are satisfied that there has been no wilful or deliberate violation of the order of the Court as alleged.

It has been brought to our notice that till date no directions had been issued for filing the paper books. The matter is a old one and cannot continue to remain so indefinitely. Accordingly, directions are issued to the appellants to file informal paper books out of court, within a period of four weeks from date and in default thereof, the appeal shall stand dismissed.

Liberty is granted to the parties to mention the appeal for early hearing. With the above observation, the Contempt Rule stand discharged.

19. The petitioner filed a review petition. The same was also dismissed by an order dated September 8, 2000 "preserving liberty, however, to the petitioner to avail of the remedy as open to him in law".

20. Before the contempt rule was discharged, the Managing Committee of the school, however, had met on May 21, 1999. It was considering a mass representation related to the petitioner. On discussion, the members noted that despite the order of the High Court the petitioner was not allowed to resume duty as a result whereof the school and the students' interests have been and are being seriously jeopardized. Unanimously, it was resolved that resumption of duty by the petitioner for the interest of the students is absolutely necessary. It was further resolved unanimously that the members of the Managing Committee have no objection if the petitioner is allowed to resume duty and that the DIoS be moved with a request to ensure that the petitioner is in a position to receive his service benefits. The Headmaster was entrusted with the duty of approaching the DIoS in this behalf. The resolution is at Annexure P-2 1 of the petition).

21. Even after the said resolution of the Managing Committee, the petitioner could not join and it appears that the DIoS by his letter dated February 9, 2000 communicated to the Secretary of the School as follows:

In reference to the above the undersigned has to inform him that it is reported that Sri Bholanath Roy, an assistant teacher of his school, is/was not allowed to join his duties inspite of having a clear and directive order of the Hon"ble High Court.

To avoid further Legal complicity or to avoid contempt of court he is requested to allow Sri Roy to join his duties at an early date.

At the time of joining he should collect al the court's order passed, so far, in this connection.

This is extremely urgent.

22. Ultimately, the petitioner could resume duty on 14.2.2000.

23. The joy of the petitioner, if any, of being able to resume duty after about 12 years of legal battle was, however, short lived. The DIoS on being communicated that C.R. 3167 of 1992 had been discharged and that the writ appeal filed by the school against the judgment dated May 10, 1991 was still pending, by Memo dated February 24, 2000 directed, inter alia, as follows:

In the above aspects and during the pendency of the appeal case he is requested to treat this office Memo. No. 2319/Law Dated 9.2.2000 as kept in abeyance until further order.

24. Upon receipt of such letter from the DIoS, the Secretary of the school responded by letter dated May 5, 2000. The letter reads as follows:

Please refer your Memo No. 2319/1(2)/Law dated : 09.02.2000 and Memo No. 2449/1(2)/Law dated 24.02.2000.

As per your aforesaid Memo dated 09.02.2000 directing us to allow the said Bholanath Roy to join his duties at an early date, we have already given effects to your said order and allowed Sri Roy to join his duties on and from 1 4.02.2000 and he is continuing in his duties in the school.

Your second Memo dated 24.02.2000 requesting to keep the said Memo dated 09.02.2000 in abeyance can not be given effect to as the teacher concerned has already joined.

As the stay order in connection of the FMAT No. 258 1 of 1992 was rejected by the Hon"ble Court. There is no bar of joining the said teacher in the School.

We are sorry to state that the Headmaster of this school is submitting to your wrong report and you are requested not to pay any heed to his report.

The Managing Committee of this Institution has decided not to proceed with the Appeal and necessary instructions will be given to the Ld.-Advocate of the M.C. that the said Appeal will not be further proceeded and the appeal may be dismissed for non-prosecution.

25. As a result of this letter sent by the Secretary of the school, the petitioner continued to discharge duty as Assistant Teacher till October 3, 2000 when, allegedly, some miscreants again prevented him from entering into the school premises. The incident was informed to the local police authorities as also to the AIoS. With the help of the local police, the petitioner was allowed to resume duty on and from November 10, 2000. The petitioner was again prevented w.e.f. November 28, 2000 and was not allowed to function despite his best efforts.

26. The version of the school, however, is that the petitioner himself did not come to the school and discharged his duty. This situation continued till January 31, 2001 when the petitioner superannuated.

27. On the very next date the appeal filed by the school against the judgment

and order dated May 10, 1991 came up for consideration before the Hon''ble Division Bench presided over by the Hon''ble the Chief Justice. By that time the Managing Committee of the school had been reconstituted and the Secretary of the newly elected Managing Committee prayed for leave to be impleaded. His prayer was allowed and he was impleaded as a respondent in the appeal.

28. Learned Counsel representing the newly elected Managing Committee submitted that it did not want to proceed with the appeal. Learned Counsel for the old Managing Committee submitted that despite orders passed by this Court, the petitioner did not resume duty. In the meantime the contempt petition and the review petition had been dismissed and, therefore, he is not entitled to any salary for the period he did not work.

29. Upon hearing such submission, the Hon''ble Division Bench passed, inter alia, the following order:

We need not go into this question as the newly elected Managing Committee does not want to press its appeal. In case, the writ petitioner-respondent herein has not joined the concerned school, it is for the Government/District Inspector of Schools (S.E.), Hooghly to see whether the writ petitioner- respondent herein is entitled to get any salary or not. Hence, we do not want to express our view in this matter, and, considering the appeal is dismissed for being not pressed as already submitted by the learned Counsel for the newly elected Managing Committee.

30. The aforesaid facts and circumstances in the background, the petitioner was not paid his dues thereby compelling him to prefer this petition with the following prayers:

a) A writ of and/or in the nature of Mandamus commanding the respondents each one of them, their servants and agents and/or subordinates and/or assigns to release the salaries and allowances after revision and/or re-fixation thereof since May, 1987 till the date of retirement of the petitioner on 31st January, 2001 within a specified time;

b) A writ of and/or in the nature of Mandamus commanding the respondents each one of them, their servants and agents and/or subordinates and/or assigns to release the retiral dues of the petitioner viz., Gratuity, Provident Fund and Pension together with 18% interest accrued thereon to be calculated from 1st February, 2001 till the date of actual payment within a specified time;

c) A writ of and/or in the nature of Mandamus commanding the respondents each one of them, their servants and agents and/or subordinates and/or assigns to forbear from withholding the payment of salaries and allowances after revision and/or re-fixation thereof since May, 1987 and release the retiral dues viz., Gratuity, Provident Fund and Pension to the petitioner;

d) A writ of and/or in the nature of Certiorari directing the respondents each one of them, their servants and agents and/or subordinates and/or assigns to

transmit the entire records of this case forming the basis of withholding of the salaries and allowances after revision and/or refixation since May, 1987 and the retiral dues of the petitioner viz., Gratuity, Provident Fund and Pension since 1st February, 2001, to this Hon"ble Court and to certify them and on being so certified quash the same;

e) A writ of and/or in the nature of Prohibition prohibiting the respondents each one of them, their servants and agents and/or subordinates and/or assigns from withholding the payment of salaries and allowances after revision and/or refixation thereof since May, 1987 and the release of the retiral dues viz., Gratuity, Provident Fund and Gratuity to the petitioner any further in any manner whatsoever;

31. The writ petition was admitted on December 7, 2001. A learned Judge passed the following order:

Affidavit-in-opposition may be filed within three weeks after Christmas Vacation, reply thereto, if any, may be filed within two weeks thereafter.

With regard to claim for payment of salary as made by the petitioner, Mr. Banerjee appearing for the School authority contested such claim and said that the petitioner has not discharged his duties and, therefore, is not entitled to such payment. On behalf of the petitioner it is contended that although he obtained orders from the Writ Court earlier as also from the various authorities, he was not allowed to discharge duties from time to time by the school authority and, therefore, he is entitled to such payment. In view of the aforesaid, the respondents authorities are directed to make payment of arrear in salary which are admitted by the respondents Nos. 5 ,6 and 7 as payable to the petitioner and such payments are to be made within a period of one month from today.

With regard to the claim for retirement benefits, as it is admitted that the petitioner has since retired on superannuation, he is entitled to payment of retirement benefits in accordance with law. Therefore, the respondents Nos. 2,3 and 8 are directed to make payment of such retirement benefits to the petitioner and the respondents Nos. 5,6 and 7 are directed to take all necessary steps for the said purpose as may be required by law and as may be required by the concerned authority. The petitioner is also directed to cooperate in the aforesaid matter. The authorities are directed to make such payment of all arrear retirement benefits within a period of three months from the date of communication of this order.

Any amount paid by the respondents to the petitioner, in terms of the present order, if accepted by the petitioner, will be without prejudice to his rights and contentions in the writ petition.

32. Alleging non-compliance of the aforesaid order, a contempt petition being CPAN No. 1197 of 2002 was filed by the petitioner. On April 4, 2003, parties were directed to exchange affidavits in connection with the contempt petition. The

Court in its order dated July 2, 2004 recorded that part of the order had been complied with and some more time was required for compliance of the rest of the order. On the prayer of the parties, hearing was adjourned. Then again, on August 6, 2004, the Court granted liberty to the petitioner to withdraw the provident fund without prejudice to his rights and contentions in the contempt petition.

33. On February 15, 2008, the petitioner filed CAN No. 1287 of 2008 for recording subsequent events and other relief. In the application, the petitioner averred that steps having been taken by the respondent authorities to pay the petitioner the arrears of salary and allowance, the Headmaster of the school had certified the claim for arrears in the sum of Rs. 11,76,242/- to be correct on July 1, 2004. The DIoS on July 16, 2004 verified the claim for arrears and also found the same to be correct. Again, on July 20, 2004, the Deputy Director (Accounts) certified the arrears as admissible pursuant where to on March 29, 2005, the Director of School Education, West Bengal (hereafter the Director) released arrears of salary vide Memo No. 752-GA. Despite issuance of the aforesaid Memo, the arrears of salary were not released in favour of the petitioner resulting in the Director issuing two letters dated June 17, 2005 and August 25, 2005 enquiring from the DIoS as to whether arrears of salary of the petitioner had been released or not.

34. On May 25, 2006, the Additional DIoS requested the Commissioner of School Education to do the needful for placement of allotment of fund for disbursing Rs. 11,76,242/- in favour of the petitioner.

35. By a further letter dated January 4, 2007, the Additional DIoS requested the Headmaster of the school to submit a requisition for payment of arrears of salary in favour of the petitioner within seven days from issue thereof. The Additional DIoS sent a reminder on February 8, 2007. All the attempts having proved abortive, the petitioner prayed in the application that an order be passed directing the respondents to:

release the arrear salary of the petitioner amounting to Rs. 11, 76,242/- and the admissible Provident Fund dues together with interest @ 18% per annum to be calculated from the date of retirement of the petitioner on 31st January, 2001 till the date of actual payment within a specified time.

36. By order dated June 23, 2009 this Court had granted liberty to the parties to exchange their affidavits in connection with the application. By further order dated January 7, 2010, the State was directed to file an affidavit for the purpose of bringing on record documents on the basis whereof the amount of Rs. 11,76,242/- was determined towards the claim of arrears of salary payable to the petitioner. They were also given liberty to enclose correspondence, if any, by and between them and the school in regard to payment of arrears of salary as well as retiral benefits to be given to the petitioner.

37. The State has since filed its affidavit, contents whereof have been disputed

by the school by filing a counter affidavit.

38. This Court has since heard the writ petition, the contempt petition and the application finally. The pleadings of the parties, the materials on record placed through various petition/affidavits, the submissions of the learned Advocate for the parties and the written notes of argument of the school have duly been considered.

39. Mr. Banerjee, learned senior advocate for the school contended that since the petitioner deliberately did not resume duty despite orders passed from time to time by this Court, question of the school submitting requisition for payment of arrears of salary to him does not and cannot arise. The State respondents according to him acted illegally in determining Rs. 11,76,242/- towards the claim for arrears of salary and allowance payable to the petitioner. He placed reliance on the orders passed by the Hon''ble Division Bench dated June 5, 1996, January 11, 2000 as well as the order dated September 8, 2000 referred to above to buttress his contention that the Hon''ble Division Bench also did not find that the school was in any way responsible for not allowing the petitioner to resume duty. He referred to the report of the DIoS dated February 3, 1997 referred to supra to drive home the point that the petitioner had not contacted the AIoS and, therefore, no date could be decided upon for allowing the petitioner to resume duty. Since the Hon''ble Division Bench had discharged the contempt rule and dismissed the review petition despite existence of the letters being part of Annexures P- 18, P- 19 and P-20 as well as the resolution being Annexure P-2 1 to the writ petition by then, the contention that has been raised by the petitioner relying thereon is hit by the principles of constructive res judicata.

40. He also referred to the order of the Hon''ble Division Bench dated February 1, 2001 wherein his submission was recorded and stressed on the point that there was no positive direction on the State respondents to pay arrears of salary and allowance to the petitioner. It was left to the discretion of the Government/the DIoS to ascertain whether the petitioner was entitled to any salary or not. The sum of Rs. 11,76,242/- was determined based on certification of the present Headmaster who joined the school on July 4, 2003 on being recommended by the Regional School Service Commission. The said Headmaster was present in the meeting of the Managing Committee of the school on June 30, 2004 when it was resolved that the letter of the AIoS in respect of the arrears of dues of the petitioner would be replied to in consultation with the learned Advocate of the school and the Secretary was entrusted to do the needful in the matter. The Headmaster despite being present in such meeting had no authority to certify the claim towards arrears payable to the petitioner and that he acted unauthorisedly.

41. Next, he submitted that in terms of the Leave Rules, it was incumbent for the petitioner to apply for and obtain leave from the West Bengal Board of Secondary Education (hereafter the Board). It is the exclusive domain and jurisdiction of the Board either to grant or refuse leave. A teaching or a non- teaching staff cannot abstain from duty for a period exceeding 5 years. The petitioner's period of

absence far exceeds 5 years. No representation having been made to the Board praying for regularization of his absence, hence he is not entitled to any arrears of salary for not having performed the duty of Assistant Teacher since May, 1987 to January 31, 2001 except for the period between February 14.2.2000 to March 31, 2000; April 19, 2000 to September 28, 2000; November 10, 2000 and November 14, 2000; and November 17, 2000 and November 25, 2000. He further contended that having remained absent without obtaining leave, the petitioner's service was also liable to be terminated. Accordingly, unless absence of the petitioner is regularized by the Board strictly in accordance with the Leave Rules, there is no scope of payment of salary and allowance to the petitioner any further.

42. He, accordingly, prayed for the dismissal of the writ petition, contempt petition as well as the application.

43. The period during which the petitioner was not in a position to render service can be divided into four compartments. This Court would now proceed to consider as to whether the petitioner is at all entitled to be treated as on duty during such compartmentalized periods.

44. The first compartment would comprise of the period between May 1987 to May 10, 1991 i.e. the date on which the petitioner's earlier writ petition was allowed by this Court.

45. In view of dismissal of the appeal preferred against the judgment and order dated May 10, 1991, none can dispute that the petitioner is entitled to the entire benefits flowing there from. Even though the petitioner may not have worked during the concerned period, he is entitled to full salary and allowance therefore.

46. The second compartment comprises of the period between May 11, 1991 and May 21, 1999.

47. The contention raised by Mr. Banerjee referring to the orders of the Hon'ble Division Bench while discharging the rule for contempt and dismissing the review petition as well as the report of the DIoS dated February 3, 1997 has not impressed this Court.

48. It would be evident from a bare perusal of the order dated January 11, 2000 extracted supra that the Hon'ble Division Bench proceeded to discharge the rule for contempt on the ground that disputed questions of fact had surfaced as a consequence whereof the Court was disabled from pronouncing as to whether the order of Court had been wilfully or deliberately violated or not. It is well-known that proceedings for contempt being quasi criminal in nature, the Court in order to hold a party guilty of contempt must reach a finding beyond reasonable doubt that the order of which contempt has been alleged was wilfully and deliberately violated. As it is, surfacing of disputed questions of fact having regard to the contradictory versions of the parties disabled the Court to arrive at a decision one way or the other. The Court never recorded that there was no

violation of the order; all that it recorded is there was no willful or deliberate violation and it stands to reason that civil contempt under the Contempt of Courts Act, 1971 had not been established. Accordingly, liberty was granted to the petitioner to seek appropriate remedies that are open to him in law. This Court further recorded that merits of the contentions urged were not decided.

49. Similar is the case with the order dismissing the review petition. Liberty to the petitioner to approach the appropriate forum was preserved.

50. The Hon'ble Division Bench itself having recorded that the merits of the contentions had not been decided, question of the contention raised by the petitioner being hit by *res judicata* and/or analogous principle has been urged to be rejected.

51. The report dated February 3, 1997 of the DIoS also does not create any impediment in the way of the petitioner to obtain relief. Mr. Dutta, learned Advocate for the petitioner, is correct in his contention that the report of the DIoS did not disclose the real state of affairs. It is incomprehensible as to why the DIoS did not refer to the endorsement of the AIoS dated July 1, 1996 that the Headmaster of the school despite assurance did not turn up to fix up the date for resumption of duty by the petitioner. The DIoS also did not spare a word in respect of the letter written by the petitioner dated July 12, 1996 urging the AIoS to communicate to him the date and time on which the petitioner could resume duty. The report being fudged, it is unreliable and this Court has no hesitation not to rely on a bit of it.

52. It would have been an uphill task for this Court to decide, on affidavit evidence, as to which version between the two i.e. the version of the petitioner that he was not allowed to resume duty and the school's version that he deliberately did not report for duty, is the correct version.

53. Fortunately for the petitioner, the resolution of the Managing Committee of the school dated May 21, 1999 clinches the issue. In view of the categorical finding recorded therein that the petitioner had not been allowed to resume duty resulting in utter prejudice being suffered by the school as well as the students, the conclusion is inevitable that the version of the petitioner is credible and thus worthy of acceptance. Absence of the petitioner during the said period being engineered by a section of people associated with the school, the petitioner cannot be deprived of the benefits which he otherwise would have been entitled to had he been allowed to serve as a teacher in the school.

54. The third compartment comprises the period between May 22, 1999 and February 13, 2000. As is evident from the resolution dated May 21, 1999, the Managing Committee had decided to approach the DIoS for ensuring resumption of duty by the petitioner and the Headmaster was given the responsibility in this behalf. In the affidavit-in-opposition of the school, there is no disclosure as to whether the DIoS was approached by it immediately thereafter or not. It is only after Memo dated February 9, 2000 issued by the DIoS that the petitioner could

resume duty on February 14, 2000. The fact that the petitioner immediately after issuance of Memo dated February 9, 2000 was allowed to resume duty on February 14, 2000 is suggestive of the fact that there was no reluctance on the part of the petitioner to resume duty; on the contrary, the school chose to wait for instructions from the DIoS to allow him to resume duty. The petitioner cannot, therefore, be held at fault for remaining absent during the period under consideration.

55. The fourth and final compartment would comprise of the periods for which the petitioner remained absent as submitted by Mr. Banerjee i.e. 18 days in April, 2000, 2 days in September, 2000, the entire of October, 2000 and about 14 days in November, 2000.

56. Yet again, allegations and counter-allegations are galore. Viewed isolatedly, it is difficult for the Court of Writ to decide as to who between the petitioner and the school is to be believed. However, having regard to the turn of events right from July, 1987 onwards the balance tilts towards the petitioner. This Court has no reason to disbelieve him and record that he had deliberately not attended school. For a person like him who has been crossing swords with the school for more than a decade, it is rather unlikely that he would abstain from attending school even a couple of months prior to his superannuation. Giving him the benefit of doubt, this Court holds that he ought to be treated as on duty even for this period.

57. The findings that this Court have returned as above render the contention of Mr. Banerjee that the State respondents did not determine the amount payable to the petitioner according to law ineffective.

58. Also, the school cannot question the act of its Headmaster in certifying the claim for arrears as correct to defeat the petitioner's right. It is settled law that in a judicial proceeding, a respondent cannot attack its own order/action. The Headmaster being an integral part of the school, it cannot refuse to abide by the actions of its Headmaster. If the Headmaster had acted in a grossly illegal manner, nothing prevented the school from proceeding against him departmentally. No departmental action having been taken, the matter must be allowed to rest.

59. The other submission that without regularisation of the period of absence of the petitioner from duty by the Board he is not entitled to any benefit for such period is a further illustration of the school's apathy and indifference towards a teacher who, for reasons beyond his control, could not resume duty. The Leave Rules, in a case of the present nature, cannot stand in the way of granting relief to the petitioner. Leave of any of the kinds mentioned therein must be obtained by a staff who intends not to work for a certain period for whatever reason he might have had. No requirement either in the Leave Rules or in any other statutory provision has been brought to the notice of this Court by Mr. Banerjee to the effect that a staff, who is inclined to discharge/perform his duty/function

but is prevented by his employer from so discharging/performing, has to apply for and obtain leave for the period he is so prevented in order to be entitled to pecuniary benefits for the period he is made to stay away from duty. From the aforesaid narration of facts and circumstances it is clear that the school must solely shoulder the blame for the impasse instead of impeding the petitioner's right to relief by raising frivolous objections.

60. Determination has been made by the respondent authorities long back in respect of the petitioner's entitlement in terms of the order of the Hon'ble Division Bench dated February 1, 2001 and it is only because of the defiant attitude of the school in not placing due requisition that the determined amount has not been paid to the petitioner.

61. This Court, accordingly, allows the writ petition by issuing Mandamus on the State and its officers to release the sum of Rs. 11, 76,242/- as early as possible but not later than two months from date of receipt of a copy of this order in favour of the petitioner. It shall be the responsibility of the school to send necessary requisition to the DIoS within two months from date to maintain official formalities. In the event such requisition is not sent within the time fixed above, the aforesaid sum shall be released without waiting for the school's formal requisition for payment of salary to reach them, as a special case, and the school shall make itself liable to be proceeded against by the respondent authorities. It shall be open to them to initiate such steps against the school, as may be permissible in law.

62. Regarding release of provident fund dues in favour of the petitioner, the DIoS shall call upon him as well as the Secretary of the school to place necessary documents in their possession before him for taking an appropriate decision in respect of the mode to be followed for such release. The petitioner and the school shall cooperate with the DIoS who shall ensure that a decision is taken in this respect according to law and it is implemented without unreasonable delay.

63. So far as the petitioner's prayer for awarding interest is concerned, it has exercised the Court's serious consideration. No doubt, the petitioner has been wronged and there has been sufficient delay in release of his retiral dues. The arrears of salary and allowance are yet to reach him. However, having regard to the facts and circumstances of this case, the State ought not to be blamed for the delay. This Court is disinclined to fasten the State with the liability of payment of interest. Being of the considered view that interest of justice would be best served if the petitioner is otherwise financially compensated for the wrong meted out to him, this Court directs that he shall be entitled to costs of proceedings assessed at Rs. 34,000/- to be paid to him by the members of the Managing Committee of the school not from the school funds but out of their own pocket. Such payment shall be made to him within two months from date.

64. In view of the above, the contempt application as well as CAN No. 1287 of 2008 also stand disposed of.

65. Urgent photostat certified copy of the judgment and order shall be given to the applicants, if applied for, as early as possible.