(2008) 04 CAL CK 0052

In the Calcutta High Court

Case No : F.M.A. No. 2564 of 2008, M.A.T. No. 4255 of 2005 and W.P. No. 9888 (W) of 2005

State of West Bengal and Others APPELLANT

Vs

Kabiruddin Sk. and Others RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Citation : (2008) 3 CALLT 517

Hon'ble Judges : Pratap Kumar Ray, J;Manik Mohan Sarkar, J

Bench : Division Bench

Advocate : Kanailal Samanta, for the Appellant;Kamalesh Bhattacharya and Jakir Hossain, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

2. Challenging the judgment and order dated 14th July, 2005 passed in W.P. No. 9888 (W) of 2005, this application has been filed by the State of West Bengal.

3. By the impugned judgment under appeal the learned trial Court directed to pay interest @ 10% per annum on the retirement benefit with effect from the date of deemed retirement, namely, August 31, 1994.

4. The factual matrix of the writ application was very short.

5. The petitioner admittedly opted for revised pay scale and benefit under the pension including family pension-cum-gratuity in terms of Government Memo No. 136-Edn (B) dated 15th May, 1985 by filing option on 25th June, 1990. As the petitioner opted the revised pay scale, he was legally responsible to retire from service at the age of 60 years being a condition of grant of such revised pay scale as introduced by "Ropa 1990". But it is an admitted position that the petitioner worked till 31st August, 1995 though he reached the age of 60 years on 31st August, 1994. Earlier the petitioner was covered under contributory

provident fund scheme prior to his filing option on 25th June, 1990 changing the said scheme to pension including family pension-cum-gratuity. Under Clause (3) of the said memo dated 15th May, 1985 the writ petitioner got the right for such a change of option to come under the West Bengal Recognised Non -Government Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981 in terms of Clause 3(b)(ii) of the said scheme. Under Clause (4)(a) of the said memo a condition was stipulated that mere filing of the option to come under the said death-cum-retirement scheme of 1981 will not automatically allow the change of such option from contributory provident fund scheme to the said scheme of 1981 unless there is a refund to the Government employer''s share of contribution together with interest accrued thereon credited against his contributory provident fund account and his own contribution along with interest is transferred to the general provident fund. So far as the own, contribution of the teacher relating to contributory provident fund scheme and its transfer to the general provident fund with interest, petitioner had nothing to do. But so far as the refund of employer''s share of contribution and the interest accrued thereof petitioner was saddled with the liability and that liability was a positive liability to come under the said scheme of 1981. Admittedly, the petitioner did not refund the employer''s share with interest accrued therein till 12th July, 2004.

6. As the petitioner did not complete the condition-precedent of enjoyment of the death-cum-retirement benefit scheme of 1981, naturally his pension paper was not made ready. The petitioner moved the writ Court by filing writ application in the year 2005 alleging, inter alia, that the State Government failed to discharge its duty so far as the release of retirement benefit is concerned despite fulfillment of all conditions as stipulated in terms of the pension regulation. Since it is an admitted fact that the petitioner had no right to work after 60 years in view of exercising option of revised pay scale under ''Ropa 1990'', which stipulates that the optee of revised pay scale under ''Ropa 1990'' would not be entitled to seek any extension of service after crossing the age of 60 years up to the period of 65 years on year to year basis subject to satisfaction of mental and physical fitness as is available to the non-optee of such revised pay scale under ''Ropa 1990'', hence it appears that the petitioner had overdrawn salary for one year due to his work till the age of 61 years. This position was regularised allowing his retirement at the age of 60 years by the deeming clause of circular letter issued by the Government as a litigation was pending in the Calcutta High Court by the Teachers'' Association on the issue that the teachers who will opt for revised pay scale under ''Ropa 1990'' also would be entitled to enjoy the benefit/privilege of extension of service till the age of 66 years in terms of the Rules of Management of Recognised Non-Government Institutions (Aided and Unaided) Rules 1969 (hereinafter referred to as the Management Rules, 1969 for brevity). The matter was decided by the High Court rejecting the plea of the Teachers'' Association.

7. Having regard to such legal position, a circular was issued granting relief to those teachers who opted revised pay scale under ''Ropa 1990'' subject to the objection as filed during the pendency of the litigation about the applicability of

deemed superannuation at the post litigation stage to enjoy the benefit of revised pay scale as well as pensionary benefit thereof by considering their actual retirement from service at the age of 60 years on stipulating a condition of refund of the overdrawal amount for rendering the service as a teacher even after crossing the age of 60 years. In the writ application it is an admitted fact that the petitioner did not refund the overdrawal amount but the same was possible to be adjusted with the retirement benefit in view of the circular letter of the Government.

8. It is also an admitted fact that the petitioner in the writ application no , where has pleaded to this effect that though the petitioner was agreeable to refund the employer''s share of contribution along with interest accrued thereof in view of filing the option to come under death-cum-retirement benefit scheme but the respondents, District Inspector of Schools concerned or Education Department did not act by informing the petitioner the amount as was required to be refunded and, as such, the petitioner had no fault in the matter of refund.

9. The writ application was disposed of by the learned trial Judge directing adjustment of overdrawal amount of salary from retirement benefit. The State Government is not aggrieved by that order in this appeal. But the learned trial Judge while directing the release of retirement benefit directed further that 10% interest with effect from the date of retirement that is 31 st August, 1994 should be paid by the State Government till the actual disbursement of the retirement benefit, namely, the pension and gratuity amount. The order of the learned trial Judge dated 14th July, 2005 reads such:

14.7.2005 ...The petitioner has superannuated from his service on

August 31, 1994.

It is submitted by the learned Counsel for the petitioner that it has been observed by the authority concerned that the pension is to be released upon adjustment of Rs. 86,964/- which was overdrawn by the petitioner due to overstay in his service. On such observation, nothing has been paid as yet.

In this case, the School Authority will send all the papers to the D.I. of Schools (SE), Dakshin Dinajpur relating to the retiral benefits of the petitioner within four weeks from the date of communication of this order, if not already sent. After getting the papers from the School Authority, the D.I. of Schools (SE) will process the papers within a period of two weeks and send it to the Director of Pension, Provident Fund & Group Insurance who in turn will release the pension payment order within four weeks from the date of receipt of the papers from the D.I. of Schools. The Treasury will release the amount within a week from the date of receipt of the papers and/or the P.P.O. While calculating the amount the authority will also calculate the interest @ 10% per annum from the date of retirement till the actual date of disbursement. The dates mentioned hereinabove are peremptory in nature.....

10. The learned trial Judge did not discuss as to why the State Government should be saddled with the liability of payment of interest @ 10% per annum, with effect from 31st August, 1994. There is no doubt in the principle of law that when there is illegal withholding of any payment and/or retirement benefit by anybody which under the law is required to be paid, the person who is withholding will be liable to pay the interest which may be termed in the nature of compensation and/or damage. The issue has been settled by the Larger Bench of the Apex Court in the case Ex. Engineer Dhan Kanal Minor Irrigation Division, Orissa v. M.C. Bharadwaj (Deceased L. Rs.) and Ors. reported in 2001 (2) SCC 721 which has been again reechoed by the Apex Court in the year 2004 with reference to the dispute in the Arbitration matter relating to the direction of payment of interest as made. Those Apex Court views have been considered by one of us (Pratap Kumar Ray, J.) while adjudicating the writ application under cause-title Atul Chandra Mahata v. The State of West Bengal and Ors. reported in 2004 (1) CLJ (Cal.) 191 to direct that the State Government would be legally liable to pay 18% interest for withholding payment of retirement benefit. In passing the said judgment Atul Chandra Mahata (supra) the Court held that though the writ petitioner therein submitted all the pension papers in right time and performed all formalities thereof but the respondents/State and its officers did not act to release the retirement benefit by preparing the pension payment order and for such delay officers of the State Government were responsible. On finding the responsibility namely, the laches and negligence on the part of the State respondents, the Court allowed the prayer of interest with a rider that the amount on account of interest as to be paid could be realised from the concerned officers of the State Government who are responsible to cause such delay by initiating appropriate proceeding thereof.

11. Having regard to the Apex Court views and the judgment Atul Chandra Mahata (supra), hence one point is clear that before directing anybody to pay interest, there must be satisfaction of the Court that the amount was illegally withheld and there is no bona fide reason for withholding the same. In the instant case, it appears that the learned trial Judge did not discuss anything on the issue as to whether there was any laches and/or negligence on the part of the officers of the State Government to release the retirement benefit in due time. From the pleading and annexed documents it appears that the petitioner himself did not complete the preparation of all the pension papers prior to 12th July, 2004, as admittedly he deposited the employer''s share of contribution which was a condition-precedent of his joining in the death-cum-retirement benefit scheme by changing his earlier option as exercised relating to the contributory provident fund scheme on that date. Only on 12th July, 2004 his option was made in order by refunding the employer''s share of contribution along with interest. As per circular letter No. 88-SE (B) dated 26th May, 1998 which provides the procedural aspect of filing the pension papers it appears that 18th months before retirement/superannuation the pension papers were required to be filed to the Headmaster concerned and thereafter it requires to be

processed. In the instant case, the petitioner did not submit his papers 18 months before his retirement, but admittedly he submitted at post retirement stage that is in theyearl998. At that time even his papers were not complete as because the employer''s share of contribution along with interest accrued thereon as was lying in the contributory provident fund was not refunded by the petitioner himself.

Having regard to all the state of affairs this Court is of the view that the officers of the State Government who are dealing with the pension matters were not at all responsible for non-releasing the retirement benefit. As soon as the petitioner left his service on 31st August, 1995 at the age of 61 years with the claim of retirement benefit on deeming his retirement at the age of 60 years with effect from 31st August, 1994, in our considered view we are not finding any laches and negligence on the part of the State respondents to release the retirement benefit forthwith. The learned trial Judge did not address the issue in the angle and also did not apply legal principle for payment of interest, as discussed above.

12. Considering those aspects of the matter, we are of the view that the learned trial Judge was not correct to make necessary direction for payment of interest.

Hence, the direction to that effect in the impugned judgment under appeal is set aside an quashed.

The appeal is accordingly allowed.

Mark Mohan Sarkar, J.

I agree.