(2012) 06 CAL CK 0043

In the Calcutta High Court

Case No : Writ Petition No. 4050 (W) of 2010

Sukumar Bera APPELLANT

Vs

The State of West Bengal and Others RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 06 CAL CK 0043

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Mukteswar Maity, for the Appellant;

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under art. 226 dated February 23, 2010 is questioning recovery of Rs. 35,662 from his retirement benefits. The petitioner was a secondary school teacher. On reaching the age of superannuation he retired from service on June 30, 2004. The respondents were under an obligation to pay him retirement benefits on July 1, 2004. The pension payment order was issued on June 17, 2004 granting him pension with effect from July 1, 2004, but showing recovery of Rs. 35,662 overpaid salary and allowances.

2. Nothing was stated in the PPO how, why and when the overpayment in question had taken place. The aggrieved petitioner submitted a representation. The respondents did not give any attention to his grievances. He filed this WP that was admitted by an order dated February 25, 2010.

3. Affidavit of service has been filed stating that the order dated February 25, 2010 was served on the respondents. The order was passed in presence of advocates for the State. By the order the respondents were directed to file affidavit-in-opposition within five weeks. They have chosen not to file any AO. None appears for them as well.

4. How, why and when the overpayment had taken place has remained unknown.

It is not the case that the petitioner''s pay had been wrongly fixed because of any misrepresentation on his part or fraud exercised by him. His pay had been fixed from time to time by the institute and the District Inspector of Schools was to approve the fixations. It is not the case that the fixations during the term of his employment had not been approved. It seems that only at the time of processing his pension case the office of the Director of Pension, Provident Fund & Group Insurance reopened the pay fixation issue.

5. In view of the decision of the Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, the respondents could not recover any amount from the petitioner''s retirement benefits, even if there was a wrong pay fixation. The recovery is unjust and unfair. It was effected arbitrarily. The petitioner is entitled to refund with interest. The fixations effected during term of employment could not be reopened at the time of processing the pension case. For these reasons, I dispose of the WP ordering as follows. The State shall refund the recovered amount, recalculate the retirement benefits on the basis of last pay drawn, pay balance retirement benefits, pension arrears, etc. On all payable amount it shall pay interest at the rate of 7% p.a. from July 1, 2004 till the date of actual payment. Compliance within four weeks from the date this order is served. No costs. Certified xerox.