

(2011) 05 CAL CK 0094
In the Calcutta High Court
Case No : Writ Petition No. 7499 (W) of 2011

Tapan Kumar Kundu

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Citation : (2011) 05 CAL CK 0094

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Kamalesh Bhattacharya, Nibaran Kumar Das and Namrata Das, for the Appellant; Rudranil De, for Respondent Nos. 5 and 6 and Debasish Kar, for State, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—The Petitioner was initially appointed as an assistant teacher in the Panchetgarh Junior High School on 17th September, 1974. At the time of his appointment he was a Science Graduate having B.Sc. degree. His appointment was duly approved by the then District Inspector of Schools, Medinipur, and his said qualification was recorded in his approval letter dated 28th September, 1974.

2. Subsequently, he improved his qualification. He passed B.A. (Special) Examination in 1984 in History. Thereafter, he also acquired Master Degree in History from the University of Calcutta. He claims that the then Managing Committee of the said School granted him permission to prosecute such higher studies and study leave was also given to him by the said Managing Committee of the said school. He further claims that since there was deficiency in the teaching staff in History in the said school he, with the due permission of the Managing Committee of the said school, had to teach History along with his subjects i.e. Mathematics and Physical Science in different classes till the date of his retirement. He retired as Headmaster of the said school on 31st July, 2009.

3. Since he improved his qualification during the tenure of his service and he taught History subject along with the aforesaid subjects in different classes in the

said school due to deficiency of teaching staff in History with the permission of the Managing Committee of the said school, his prayer for grant of higher scale of pay was recommended by the Managing Committee of the said school and the then District Inspector of Schools (S.E.) acting on such recommendation of the school authority, sanctioned his higher scale of pay which was admissible to the teacher having Master Degree, with effect from 6th April, 1986, which was the date following the last date of his M.A. Examination. He enjoyed the said scale till his retirement.

4. Trouble started during settlement of his pension paper, as the Joint D.A. Purba Medinipur raised objection in relation to his entitlement to get higher scale of pay as per G.O. date 31.07.1981 as according to him, the said teacher having increased his qualification in a subject which was not relevant to his teaching subject, is not entitled to get higher scale of pay for his enhanced qualification.

5. In such context, a writ petition being W.P. No. 20156(W) of 2010 was filed by him, and in pursuance of an order passed by a learned Single Judge of this Court on 1st October, 2010, the District Inspector of Schools, Purba Medinipur considered the grievances of the Petitioner after hearing him and the school authority including the teacher-in-charge.

6. In course of hearing, the said problem was further aggravated, as doubt was expressed by the said D.I. of Schools about the genuineness of his certificates in his B.A. (Special) in History Examination as well as in his M.A. Examination. Those certificates were forwarded to the University of Calcutta for verification. Report from the University is still awaiting. As a result, final decision could not be taken by the said D.I. of Schools.

7. That apart, in course of hearing, nothing could be produced before the said D.I. of Schools to show that the Petitioner improved his qualification by taking prior permission from the school authority and study leave was granted to him allowing him to appear in those examinations. No document could be produced to show that History classes were allotted to him and he took History classes due to deficiency of History teacher in the school. As a result, the D.I. of Schools became suspicious about the claim of the Petitioner and suspected that the higher scale of pay was granted to him due to misrepresentation made by the Petitioner about various factors as stated above, such as (i) enhancement of qualification with prior permission from the school authority; (ii) grant of study leave; (iii) taking classes in the subject group with the permission of Managing Committee of the said school; (iv) deficiency in teaching staff in History in the school etc.

8. Though it is true that in ordinary circumstances where the employee had no role to play in erroneous pay fixation of the employee by the employer and as result thereof excess payment was made to him during the tenure of service, such overdrawn amount cannot be realized and/or recovered from such employee after his retirement from his retiral dues in view of the decision of the

Hon"ble Supreme Court in the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , but such recovery and/or realization of excess payment due to his wrong pay fixation even after his retirement out of his retiral dues cannot be opposed by the employee, if it is found that such refixation of pay scale was made due to misrepresentation made by the employee with regard to the factors which were relevant for such pay revision.

9. Since commission of fraud by the Petitioner in the process of his pay fixation at the higher scale was suspected by the D.I. of Schools, and since the investigation is still under process, this Court cannot direct the Respondents to pay the retiral due and/or the pensionary reliefs to the Petitioner, before conclusion of the investigation. This Court, thus, directs that such investigation should be completed as early as possible but not later than eight weeks from the date of communication of this order so that the retiral dues and/or pensionary reliefs are made available to the Petitioner without causing any further delay.

10. Pending disposal of the said investigation, the State Respondents are directed to pay the provisional gratuity and provisional pension to the Petitioner. Such exercise should be completed within six weeks from the date of communication of this order.

11. The writ petition is, thus, disposed of.

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