

20 10.12.2021
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W.P.A. 147 of 2014
(Through Video Conference)

Sk. Manjurul Haque

-vs-

The State of West Bengal & Ors.

Mr. Subir Sanyal

Mr. Sutirtha Das

... for the petitioner.

Mr. Biswajit De

Mrs. Shabana Hasin

... for the State.

The writ petitioner was an Assistant Teacher in a Government aided Madrasah namely, Balaramgarh High Madrasah, Post Office-Rathipur, District- Paschim Medinipur. The writ petitioner was appointed on 1st April, 1976 in the said Madrasah. After rendering satisfactory service he retired on superannuation on 30th September, 2011.

The writ petitioner's claim for release of retiral dues including the monthly pension was processed by the District Inspector of Schools (SE), Paschim Medinipur, and while considering the entitlement of the writ petitioner to receive retiral dues question cropped up what should be the basic pay of the writ petitioner on 1st April, 1986. According to the respondent authorities the writ

petitioner is entitled to get the benefit of basic pay of Rs. 540/- on 1st of April, 1986 upon sanction of one increment by treating him as a trained teacher and while deciding the said issue by issuing Memo dated 21st June, 2012 being No. 203-S/P the concerned District Inspector of Schools refixed the pay of the writ petitioner on 1st April, 1986 at Rs. 520/- instead of Rs.540/- which the writ petitioner enjoyed till the date of superannuation on 30th September, 2011. It appears from the said Memo dated 21st June, 2012 that concerned District Inspector of Schools came to such finding on fixation of pay of the writ petitioner on 1st April, 1986 upon finding that the writ petitioner had not completed 10 years service prior to option of ROPA -1981 as per G.O. No. 492 Edn (B) dated 26th October, 1981 read with G.O. No. 372-Edn(B) dated 31st July, 1981. Accordingly, the respondent authorities found overdrawal of pay by the writ petitioner and a decision was taken to the extent of taking refund from the writ petitioner before release of retiral dues in his favour on the basis of calculation made as contained in the said Memo dated 21st June, 2012.

The affidavit-in-opposition affirmed on behalf of the State respondents is filed in Court and

taken on record.

Mr. Biswajit De, learned advocate representing the State respondents has opposed the prayer of the writ petitioner relating to fixation of pay @ Rs. 540/- w.e.f. 1st April, 1986 by placing reliance on the point taken by the District Inspector of Schools as it appears from the Memo dated 21st June, 2012.

The writ petitioner filed first writ petition being W.P. 17512 (W) of 2012 questioning the demand of refund as made by the respondent authorities as well as the calculation relating to his fixation of pay on 1st April, 1986. The writ petitioner took the point in the said writ petition that he is entitled to get the benefit of pay @ Rs.540/- w.e.f. 1st April, 1986 in terms of Government Order dated 17th May, 1985 being No. 142-Edn.(B).

The writ petition was allowed by a Co-ordinate Bench by order dated 12th October, 2012 and it also appears from the said order that the Co-ordinate Bench not only restrained the respondent authorities from making deduction from the retiral dues of the writ petitioner but also set aside the calculation made by the respondent authorities relating to fixation of pay of the writ petitioner. The

effect of the order dated 12th October, 2012 virtually negated the decision of the concerned District Inspector of Schools as contained in the Memo dated 21st June, 2012.

Pursuant to the said order of the Co-ordinate Bench dated 12th October, 2012 pension payment order was issued in favour of the writ petitioner on 23rd April, 2013 and presently petitioner is in receipt of monthly pension and other benefits regularly.

In the present writ petition petitioner has questioned the Memo dated 18th September 2013 issued by the Joint Director of Pension, Provident Fund, Group Insurance, Government of West Bengal, respondent no. 6, annexure P-18 of the writ petition wherefrom it appears that the respondent no. 6 by issuing a cryptic order decided that vide order dated 12th October, 2012 the Co-ordinate Bench has directed the respondent to release the pensionary benefits without any deduction on account of overdrawal due to wrong fixation of pay but the calculation which was made by the respondent authorities while deciding requirement of deduction of alleged overdrawal amount was surprisingly accepted by the respondent no. 6, though conspicuously impugned

calculation was set aside by the Co-ordinate Bench vide order dated 12th October, 2012. This decision of the respondent no. 6, communicated vide Memo dated 18th September, 2013 is questioned in the present writ petition upon placing reliance on the previous decision of a Co-ordinate Bench dated 12th October, 2012 where decision to deduct the alleged overdrawal amount based on calculation was set aside.

On consideration of the facts as aforesaid as well as the decision of the Co-ordinate Bench dated 12th October, 2012 it transpires that the respondent no. 6 proceeded wrongly by following the calculation which was made by the District Inspector of Schools as emanates from Memo dated 21st June, 2012. Therefore, Memo dated 18th September, 2013 of the respondent no.6 is set aside.

The writ petitioner during course of submission has relied upon a Government Circular dated 17th May, 1985 being No. 142-Edn.(B) which according to the writ petitioner confers right upon him to enjoy pay @ of Rs. 540/- instead of Rs. 520/- w.e.f. 1st April, 1986 on grant of one incremental benefit by treating the writ petitioner as a trained teacher considering his date of

appointment on 1st April, 1986.

This Court finds merit in the submission of the writ petitioner that if the said Government Order dated 17th May, 1985 is applied in that event the writ petitioner is entitled to receive the benefit of pay @ Rs.540/-w.e.f. 1st April, 1986. However, the Court refrains from making calculation of the basic pay of the writ petitioner w.e.f. 1st April, 1986 and direct the Director of Madrasah Education, West Bengal, respondent no. 2, to take a decision on rate of pay of the writ petitioner w.e.f. 1st April, 1986 within a period of (12) twelve weeks from the date of communication of this order. The respondent no. 2, is directed to give an opportunity of hearing to the writ petitioner before taking such decision. It is made clear that since the reasons as contained in Memo dated 21st June, 2012 issued by the District Inspector of Schools (SE), Paschim Medinipur was negated by virtue of the order of the Co-ordinate Bench dated 12th October, 2012 the respondent no. 2 shall not rely upon the same reasons while considering the claim of the writ petitioner. The decision to be taken by the respondent no. 2 shall be communicated within a period of one week thereafter.

If the decision is finally taken by the

respondent no. 2 by fixing the pay of the writ petitioner @ Rs. 540/- w.e.f.1st April, 1986 the respondent authorities shall be directed by the respondent no.2 to revise the pension payment order which has already been issued in favour of the writ petitioner.

With the above direction the writ petition is disposed of. There shall be no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)