15-11-2021
Item no.2
Subrata

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

MAT No.715 of 2019
The Managing Committee, Basudebpur High School (H.S.) & Another
-vs-
The State of West Bengal & Ors.

Mr. Atarup Banerjee
Mr. Subhas Jana ...for the appellants

Mr. Tapan Kumar Mukherjee
Mr. Bipin Ghosh ...for the State

Mr. Subir Sanyal
Mr. Sakati Pada Jana ...for respondent no.8

There appears to be no substantial grounds of grievance against the judgement and order dated 24th May 2019, under appeal.

The learned single judge directed the respondents to disburse the arrear salary and other retirement benefits to the writ petitioner, the eighth respondent herein.

The only ground on which the managing committee of Basudebpur High School seeks to maintain this appeal is this. If ultimately the eighth respondent-writ petitioner is found guilty in a disciplinary proceeding initiated alleging misappropriation of over Rs.3,00,000/-, the appellants would not be able to recover it, if the above entitlements are released to the eighth respondent-writ petitioner.

First of all, we have to deal with the worth of this claim. The eighth respondent-writ petitioner, the headmistress of the concerned school, was suspended on 15th June 2015 on the accusation that she had misappropriated a little over Rs.3,00,000/- which was received by the school in US dollars from a donor.

It appears that simultaneously disciplinary proceedings were started against her and charge-sheet framed. She challenged these proceedings before the Appeal Committee of the West Bengal Board of Secondary Education, which, on 1st December 2017, quashed the proceedings including the charge-sheet.

The school authorities have preferred a writ application in this court challenging this, which is still pending.

Meanwhile, the writ petitioner retired on 31st May 2019.

Thus, as of today, there is no disciplinary proceeding against her. The disciplinary proceeding would revive, if and when or at all the writ application by the school authorities succeeds. It appears to us that the likelihood of revival of the disciplinary proceedings in the future is very remote. To withhold the entire retirement benefits on this remote contingency is unfair.

Now, let us come to the various rules governing the matter. Learned counsel for the appellants has shown us a notification dated 8th March 2018 of the School Education Department, Government of West Bengal.

Rule 9 of the said notification is as follows:–

> "9. **Penalties.**– (1) If a teacher or a non-teaching staff is found guilty of any misconduct, the disciplinary authority may, where the misconduct is not grave or criminal in nature, give him reasonable opportunity for rectification of such misconduct and give him a written warning.
>
> (2) The disciplinary authority may, by final order, inflict any one or more of the penalties, as mentioned below, upon a teacher of an on-teaching staff after going through the procedure as prescribed for disciplinary proceedings:
>
> (a) Censure;
>
> (b) Withholding of one or more (not exceeding three) annual increments;
>
> (c) Stoppage of Career Advancement Scheme benefit;

(d) Deduction of pension amount or gratuity amount;

(e) Compulsory retirement with appropriate rate of pensionary benefits;

(f) Removal from service; or

(g) Dismissal from service which shall ordinarily be a disqualification for future employment as teaching and non-teaching staff in recognized Institutions;

Note 1.– Penalties should be proportionate to the gravity of misconduct.

Note 2.– Any penalty, except censure, shall be recorded in the Service Book of the concerned teacher or non-teaching staff and the entry in this regard shall be countersigned by the District Inspector of School."

We observe at the outset that this rule refers to imposition of penalty, if the delinquent is found guilty at the culmination of disciplinary proceedings. Here, that stage has not been reached.

We have also taken note of the West Bengal Recognized Non-government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981. Paragraph 45 of the Scheme stipulates that where provision has not been made in this Scheme for any matter, the relevant provisions in the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, amended from time to time, would apply.

Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 lays down as follows: -

> "10(1). The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of is service, including service rendered on re-employment after retirement."

In order to withhold pension, the disciplinary proceedings must have been instituted while the employee was in service.

Here, admittedly the proceedings were so started. It should also be pending on the date of retirement. We notice that in this case, at the date of retirement, there was no pending disciplinary proceeding. Furthermore, to attract the rule, there must be adjudication of guilt of the employee. In this case, there is no such adjudication as of date.

It would be stretching the rule excessively, if this court is to hold that disbursement of the dues of an employee would be held up for an indefinite period to enable the employer to adjudicate him or her guilty.

It would also be very unreasonable to withhold the dues on the anticipation that a quashed departmental proceeding would be revived by orders of court.

Therefore, in those circumstances and considering the equities, the court is to take a reasonable and pragmatic view of the matter.

We are told that the arrear salary has already been paid to the writ petitioner. Our view is that the outstanding retirement benefits, like provident fund, gratuity, pension, if not released, should be released to the eighth respondent-writ petitioner by 31st December 2021.

We order accordingly. However, the eighth respondent-writ petitioner shall keep a sum of Rs.3,00,000/- (Rupees three lakh only) in a separate interest-bearing account in her name in a nationalised bank, upon intimation to the appellants, for a period up to 30th April 2022.

During this period, the appellants or any other authority are free to take steps as may be available in accordance with law. If there is no order to the contrary, the appellants will be free to utilise the sum without any impediment after 30th April 2022. Subject to what is provided hereinbefore, the appellants shall strictly comply with the impugned judgement and order dated 24th May 2019, so that all retirement benefits can be released to the respondent-writ petitioner within the above stipulated period.

Our order directing creation of a separate account for Rs.3,00,000/- would abide by any final order, if any, to be passed by a court.

MAT No.715 of 2019 is, thus, disposed of.

[I.P. Mukerji, J]

[Aniruddha Roy, J]