

11.04.2022
SL No. 15
Court No. 24
(P.M)

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 1758 of 2022

**Sukumar Chatterjee
Vs
The State of West Bengal & Ors.**

Mr. Bhagbat Chaudhuri,
Mr. Sariful Islam Mallick
... for the petitioner .

Ms. Bineeta Bhattacharjee
... for the State

Mr. Bhaskar Prasad Vaisya,
Mr. Suman Dey
... for DPSC, Bankura

The petitioner is a retired teacher. He has not been paid his terminal benefits and retiral dues on the ground that there is a sum of Rs. 1,07,021 (rupees one lakh seven thousand and twenty one only) which has been overdrawn by him.

The said overdrawn amount was because the petitioner opted for the annual increment with effect from 28th June, 2009.

The relevant page of the service book has been annexed to the instructions forwarded by the District Inspector of Schools, Primary

Education, Bankura to the learned advocate representing the State respondents.

It appears therefrom that there is a noting of the Sub-Inspector of Schools wherefrom it appears that the petitioner opted to get the ten years benefit with effect from 1st July, 2009 after completion of ten years service on 28th June, 2009. Due to clerical mistake it was wrongly noted that the benefit be given with effect from 29th June, 2009 which was rectified, but the teacher withdrew salary as usual. As a result there is no complicity in allowing ten years benefit with effect from 1st July, 2009.

Admittedly, the petitioner completed ten years of service on 28th June, 2009 but he opted for getting the benefit of increment on completion of ten years service with effect from 1st July, 2009. The same is in accordance with the Memo No. 181-SE(B)/5B-1/09 dated 8th October, 2009 which specially mentions that in case the employee opts for the benefit on the date of accrual of annual increment i.e. on 1st July he will get the annual increment first and then he will get the additional increment for

non-functional benefit on the basic pay arrived at after getting the annual increment.

The petitioner, in the instant case, was eligible to get the ten years benefit on 28th June, 2009 but he opted for getting the benefit with effect from 1st July, 2009.

Accordingly, it appears that there was no scope for payment of any double amount to the petitioner. As such, there is no reason to direct the petitioner to refund the overdrawn amount as there was no overdrawal at all.

The Hon'ble Supreme Court in the matter of State of Punjab vs Rafiq Masih (White Washer) reported in (2015) 4 SCC 334 clearly held that withdrawal is impermissible from employees who had retired and if the amount was enjoyed by the employee for a continuous period in excess of five years before the order of recovery is issued.

In the present case, the petitioner enjoyed the alleged amount from the year 2009 till he retired in the year 2021. Hence, recovery from the petitioner is impermissible in law.

In view of the above, the District Inspector of Schools and the Joint Director of Accounts, School Education Department,

Bankura are directed to reconsider the matter all over again and to take a decision with regard to the pay fixation of the petitioner so that he may be paid his terminal benefits on the basis of the proper scale of pay which the petitioner is entitled to receive.

The decision shall be taken by the aforesaid respondents, strictly in accordance with law at the earliest, but positively within a period of three months from the date of communication of a copy of this order.

Till decision is taken for payment of final pension, the District Inspector of Schools shall take steps for releasing provisional pension in favour of the petitioner within a period of six weeks from the date of communication of the order.

The writ petition stands disposed of.

The documents handed over by the learned advocate representing the State respondents by way of instruction from the District Inspector of Schools, Primary Education, Bankura and the exception to the same filed by the petitioner be retained with the records.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)