

Item No. 45

10.05.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 6171 of 2022

Sri Sukdeb Haldar
v.
The State of West Bengal & Ors.

Mr. Chittapriya Ghosh
Ms. Priyanka Saha
Ms. Komal Singh
... for the petitioner.

Mr. Bhaskar Prasad Vaisya
Mr. Gaurab Das
... for DPSC, South 24-Parganas.

Mr. Pinaki Dhole
Mr. Tuli Sinha
... for the State respondents.

The petitioner retired as a primary school teacher on attaining his normal age of superannuation on June 30, 2008. He was appointed on September 10, 1973 with effect from January 1, 1973.

While the petitioner was in service he was arrested in connection with Basanti Police Station Case No. 59(6) of 1991 on June 16, 1991. The petitioner was enlarged on bail on July 15, 1991. As the petitioner remained under suspension for a period exceeding forty-eight hours, a formal order of suspension was issued against him. The petitioner was not allowed to join the duties and he was paid subsistence allowance and other allowances as usual on furnishing a declaration that he was not engaged in other service.

The order of suspension was withdrawn by memo dated September 1, 1995 and the petitioner was permitted to join and perform his duties. The petitioner duly joined service once again on September 2, 1995 and served till he attained his age of superannuation.

The grievance of the petitioner is that after his retirement he has been paid only provisional pension and provisional gratuity. The petitioner is presently seventy-four years of age and he submits that he is in dire financial crisis and he requires money for his subsistence and medical expenditure.

Pension and other terminal benefits of the petitioner could not be paid in full by the respondent authority allegedly because of pendency of the criminal proceeding against him.

It has been admitted by the parties that the criminal case which was initiated in the year 1991 is pending till date.

The District Inspector of Schools (P.E.), South 24-Parganas has forwarded a written instruction to the learned advocate wherein it has been mentioned that in view of the Government Order No. 88/SE(B) dated May 26, 1998, para-1.7 full pension of the petitioner cannot be disbursed.

Paragraph 1.7 of the aforesaid G.O. dated May 26, 1998 is set out hereunder:-

1.7. The Headmaster/Headmistress/Teacher-in-charge/Sub-Inspector (Circle) shall promptly issue reply to any observation/objection made by the Pension Sanctioning Authority/DPPG in connection with the disposal of any pension case to enable the Pension Sanctioning Authority to issue pension Sanction Order in time. In no case the Headmaster/

Headmistress/Administrator/Teacher-in-charge/Sub-Inspector (Circle) shall take more than a month to meet up the objections so raised. Provided that if any disciplinary proceeding has been instituted during the intervening period between forwarding of pension papers to the District Inspector of Schools/Pension Sanctioning Authority (PSA) or DPPG, the fact shall be promptly reported to the PSA and DPPG. The pensionary benefit will be stopped so long as the retiring employee is not honourably acquitted of the charges. Where disciplinary proceeding is pending even after the employee attained the age of superannuation, the PSA may sanction provisional pension till conclusion of the disciplinary proceeding, but no gratuity or commuted value of pension shall be paid during this period. On completion of disciplinary proceedings, if any employee is honourably acquitted, the pension sanctioning authority or DPPG, as the case may be sanction the pension of the employee, indicating there in the amount of provisional pension sanctioned in favour of the employee concerned and also the period of such payment (if any) for adjustment of the same against final pension.”

The aforesaid provision mentions that if any disciplinary proceeding has been instituted during the intervening period between forwarding of pension papers to the District Inspector of Schools/Pension Sanctioning Authority (PSA) or DPPG, the fact shall be promptly reported to the PSA and DPPG. The pensionary benefit will be stopped so long as the retiring employee is not honourably acquitted of the charges. Where disciplinary proceeding is pending even after the employee attained the age of superannuation, the PSA may sanction provisional pension till conclusion of the disciplinary proceeding, but no gratuity or commuted value of pension shall be paid during this period. On completion of disciplinary proceedings, if any employee is honourably acquitted, the pension sanctioning authority or DPPG, as the case may be sanction the pension of the employee.

In the present case no disciplinary proceeding was ever initiated against the teacher. It is only the criminal case which is *sub judice* before the learned Criminal Court. There is no charge against the petitioner regarding any financial irregularity.

Learned advocate representing the District Primary School Council, South 24-Parganas submits that as per the provision of paragraph 19(5) of DCRB Scheme, 1981, final pension, gratuity etc, shall not be sanctioned to an employee against whom departmental/judicial/proceedings have been instituted/continued. In case of misconduct of the pensioner, the Pension Sanctioning Authority has the power to withhold pension or reduce the pension.

Where any departmental or judicial proceeding is instituted or where a departmental proceedings is continued against an employee who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying services up to the date of retirement. Provisional pension shall be adjusted against the final retirement benefits sanctioned to such employee after conclusion of the aforesaid proceeding.

It has already been observed hereinabove that no departmental proceeding was ever been initiated against the petitioner. The only proceeding that is pending is the criminal case that has been filed against him in the year 1991. There is no allegation of misconduct either.

This Court in the matter of **Anadi Prasad Mahato -vs- State of West Bengal & Ors.** reported in **2014 (2) CHN (Cal) 103** and in the matter of **Gunamay Mahata -vs- The State of West Bengal & Ors.** reported in **2015 SCC Online CAL 7503** held that as the offence of the petitioner had no nexus with his service and there is no allegation of pecuniary loss of the Government by the petitioner during his service tenure, accordingly, the respondent authorities cannot withhold the terminal benefits of the retired teacher.

In the present case also the allegation against the petitioner is no way connected to his service. There is no allegation of pecuniary loss caused by the petitioner during his service tenure. Moreover, it can never be asserted with certainty as to when the criminal case will come to an end. Already thirty years have elapsed from the date the criminal case was initiated. The case may not come to a close during the life time of the retired teacher.

It appears that the suspension order which was passed had been withdrawn. In the meantime, the petitioner attained his normal age of superannuation on 30.06.2008.

There is no allegation of pecuniary loss caused by the petitioner during his service tenure. The judicial proceeding which has been referred to in the DCRB Scheme has to be taken as a proceeding alleging pecuniary loss to the Government/ financial irregularity or any illegal act committed by a teacher during his service tenure which is directly in connection with his service. The same cannot apply in respect of each and every judicial proceeding which has no nexus or is not related with the service of the teacher.

Accordingly, there is no reason to withhold the pensionary benefit/terminal relief of the petitioner.

In view of the law laid down by this Court in the matter of Anadi Prasad Mahato (supra) and Gunamay Mahato (supra), the District Primary School Council, 24 Pgs(S), through the Chairman, District Primary School Council, 24 Pgs(S) and the District Inspector of Schools (P.E.), 24 Pgs(S) are directed to take necessary steps to disburse full pension and all other terminal benefits to the petitioner after adjustment of the money which has been paid and received by the petitioner, without any further delay.

Steps shall be taken to release the dues of the petitioner positively within a period of six months from the date of communication of a copy of this order.

The petitioner is directed to forward to the aforesaid respondents a copy of all the supporting documents in his favour for grant of terminal relief at the time of communicating the order of the Court.

The writ petition stands disposed of.

Instruction given by the District Inspector of Schools (P.E.) South 24-Parganas be retained with the records.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)