

Present :- Hon'ble Mr. Justice Md. Nizamuddin

Dr. Anisur Rahaman

Vs.

The State of West Bengal & Ors.

Judgment on :- **08.03.2022**

MD. NIZAMUDDIN, J.

Heard learned Advocates appearing for the parties.

Petitioner has filed this Writ Petition being aggrieved by inaction on the part of the respondent teacher-in-charge/Headmaster of the School namely Mitra Institution (Main), Kolkata, in issuing 'No Liability Certificate' in favour of the petitioner and sending the same to State Education authority concerned for the purpose of disbursement of pensionary benefit as per the Pension Payment Order (PPO) dated 24th February, 2021 issued by District Inspector of School and non payment of all retiral benefits to the petitioner.

Case of the petitioner in brief are as hereunder.

Writ Petitioner was appointed as the Headmaster of Mitra Institution (Main), Kolkata on 14th May, 2004 and which was approved by the District Inspector of Schools (SE) on 11th August, 2004 and he retired from his service on 30th June, 2020 and on 29th June, 2020 the Managing Committee of School unanimously decided that the Assistant Teacher one Mr. Biplab Naha Biswas will be

appointed as Teacher-in-charge of the School and that the Teacher-in-charge will issue 'No Liability Certificate' to the petitioner for the purpose of releasing his pension and other retiral benefits. It is also the case of the petitioner that while processing the pension papers before the State authorities concerned for sanctioning the retiral benefits of the petitioner, the President of the School (in absence of the Headmaster) issued 'No Liability Certificate' with the observation that the petitioner had no liability to the School. After considering all the relevant papers regarding service of the petitioner the State School authority concerned issued pension payment order on 24th February, 2021 as appears at Page 35 of the Writ Petition and in view of the aforesaid circumstances the Teacher-in-charge/Headmaster of the School is duty bound to send on-line 'No Liability Certificate' to the State Authority concerned which he failed to do in spite of repeated request made by the petitioner from time to time and such action of the Teacher-in-charge/Headmaster not issuing the 'No Liability Certificate' in favour of the petitioner without initiating any disciplinary proceeding on charge if any against the petitioner at this retired stage of his life is causing infringement of his right to livelihood by denial of all retiral benefit including pension after rendering service to the institution as Headmaster for 16 years.

Learned Advocate appearing on behalf of the respondent School Authority submits that reason for not issuing the 'No Liability Certificate' is that the petitioner has committed illegality and irregularity by appointing the Auditor for audit of the School for the financial year 2017-18, 2018-19 and 2019-20 outside the Government empanelled Auditor which was beyond the official power and function of the Writ Petitioner and the payment of fees to the Auditor was made from the School fund. The respondent School Authority has annexed a Memo/document to the supplementary affidavit-in-opposition affirmed on 21st December, 2021 by the respondent Headmaster of the School, issued by the Commissioner of School Education (SE) dated 15th September, 2021 which appears at Page 8 of the said supplementary affidavit-in-opposition

from which it appears that the Commissioner of School Education has issued the said memo addressing to the Headmaster of the School expressing inter alia his observations and opinions which are as follows:

“1. Headmaster of a School is not authorized to appoint Auditor for the purpose of audit of his own school. It is the prerogative of the Commissioner of School Education, West Bengal.

2. The action of the Headmaster in auditing school accounts through his own appointed auditor is to fulfil his vested interest and hence the Commissioner of School Education, West Bengal is not in a position to ratify this action.

3. The Headmaster himself has to bear the cost of this audit. In case it is paid out of school-fund then school authority has to recover the amount from him.

4. While issuing No Objection/No Liability Certificate in favour of Dr. Anisur Rahaman, Retired Headmaster of the School, the amount so spent out of the school fund has to show as liability recoverable from terminal benefit of Dr. Anisur Rahaman, Retired Headmaster of the School, if he is unable to recoup such expenses to the school.”

On perusal of the aforesaid letter dated 15th September, 2021, issued by the Commissioner of School Education, West Bengal, it appears that the main and only allegation against the petitioner is about unauthorised appointment of Auditor for the purpose of audit of the School which according to him is prerogative of the Commissioner of School Education and that the then Headmaster/petitioner will have to bear the cost of the said audit which was paid from the School fund and has to be recovered from him before issuing No Objection/ No Liability Certificate in favour of the petitioner. Apart from this no other allegation has been referred or indicated against the petitioner in the aforesaid letter/Memo of the Commissioner of School Education, West Bengal for refusal to issue No Objection/ No Liability Certificate in favour of the petitioner.

Learned Advocate appearing for the respondent School Authority in defending their action submits that there is allegation of defalcation of School fund against the petitioner during the tenure of his service. When he was asked by this Court that was any disciplinary proceeding initiated against the petitioner either before his retirement or at the time of retirement or even after his retirement is any disciplinary proceeding pending against the petitioner to which he admitted that no such disciplinary proceeding was ever initiated at any point of time against the petitioner or is pending. Respondent submits that there is allegation of misuse of fund of the School by the petitioner and that the respondent Headmaster of the School has lodged an FIR against the petitioner on 7th December, 2021 for the first time much after retirement of the petitioner on 30th June, 2021 and after filing of the instant Writ Petition which was filed on 13th April, 2021 and even much longer after affirming the affidavit-in-opposition by the respondent/Teacher-in-charge/Headmaster of the School which was affirmed on 13th July, 2021 wherein there is no whispering or story of lodging of any such FIR dated 7th December, 2021 against the petitioner. After fixing the date of final hearing of the Writ Petition on 16th August, 2021 by the order of this Court dated 29th July, 2021, respondent/Teacher-in-charge/Headmaster by way of supplementary affidavit affirmed on 21st December, 2021 annexed the copy of the purported FIR dated 7th December, 2021 against the petitioner while the petitioner had already retired on 30th June, 2020 that is almost one and a half year after the retirement of the petitioner while the Teacher-in-charge who has lodged the FIR was appointed and taken charge of the School as Teacher-in-charge on 29th June, 2020. Considering the aforesaid facts as appears from record and particularly the aforesaid letter/Memo of the Commissioner of School Education dated 15th September, 2021, from which it appears that except the allegation of unauthorised appointment of the Auditor by the petitioner during the period in question all the allegations and filing of FIR much after filing of Writ Petition are afterthought since at no point of time any disciplinary proceeding was

initiated against the petitioner either during tenure of his service or even at the time of filing affidavit-in-opposition by the respondent Headmaster which was affirmed on 13th June, 2021 there was no existence of such FIR against the petitioner till such time. This matter after completion of affidavit was taken by me from time to time from 1st July, 2021, but at no point of time the respondent School authority came up with any document against the petitioner relating to initiation or pendency of any disciplinary proceeding nor about lodging of any FIR against the petitioner and no such story of lodging of FIR was made out in the affidavit-in-opposition filed by the respondent or even after filing of affidavit-in-reply by the petitioner affirmed on 27th July, 2021. It seems that the respondent Teacher-in-charge/Headmaster having personal grudge against the petitioner and with a vindictive attitude and malafide and just to cover up his fault and to victimise the Writ Petitioner for coming to this Writ Court has lodged the said FIR for the first time on 7th December, 2021 after completion of affidavits and after fixation of date of final hearing of this Writ Petition by making desperate attempt to make out a new case in the supplementary affidavit-in-opposition beyond the scope of its affidavit-in-opposition.

It appears that the School Authority/respondent nos. 5 & 6 have annexed to their affidavit-in-opposition the documents showing total amount of payment of Rs. 24,000/- made to the said Auditor M/s MC Som Enterprises Chartered Accountant for audit of the School for the financial years 2016-17 and 2017-18, for the period 31st March, 2017 – 31st March, 2018, for the year 2019, and for the period 31st March, 2019 to 31st March, 2020, which according to the respondents was unauthorised.

Petitioner in support of his contention on the issue of withholding of pension and other retiral benefit of the petitioner by the respondents after his retirement in absence of any disciplinary proceeding, has relied on a decision of this Court in the case of Md Sayed –vs- State of West Bengal & Ors. reported in

(2017) 2 CAL LT 129 (HC) and relevant paragraphs 26 – 29 of the said case are quoted hereunder:

“26. In the present case, the allegations against the petitioner has never been proved. That apart, no disciplinary action was contemplated against the petitioner during his service tenure. Only an enquiry was sought to be made and on the basis of that no conclusion has yet been reached. Therefore, the authorities are not authorized by law to withhold the pension of the petitioner in view of the aforesaid scheme. As held by the Hon’ble Apex Court in the case of Durgadas Mukhopadhyay (supra) this Court is of the considered view that rules are provided for disciplinary proceedings and the same can be initiated against an employee but if a teacher retired, there is no question of removal or dismissal after retirement. At the same time, there is no scope for contemplating any disciplinary proceeding against a teacher after his retirement nor a departmental proceeding can be initiated against a retired teacher with retrospective effect. In the present case, no departmental proceeding was initiated nor was there any scope to inflict any punishment upon the teacher. A departmental proceeding can continue so long as the employee is in service unless any rule is cited on behalf of the State respondents that even a departmental proceeding can continue after the retirement of an employee the decision to withhold the pension of the employee as a whole or in part is without any basis. In this case, complaint was made before the District Inspector of Schools (S.E.), Malda, before the employee concerned retired, but nothing contemplated as per rules and the employee was allowed to retire. That being so, the action purported to have been taken by the District Inspector of Schools (S.E.), Malda, against the retired teacher is not sustainable in law. This Court hold that according to paragraph 19(5) of the Pension Scheme of 1981 it is abundantly clear without any ambiguity that the eligibility and the entitlement to pension can be reduced or withheld on certain grounds and certain provisions have been provided therein for determining as to whether the pension should be withheld or in a case it can be reduced. As indicated above, in case any charge of corruption against the employee, pension can be denied but such corruption has to be proved which is mandatory under the aforesaid scheme. Undisputedly, rather admittedly, there was no disciplinary proceeding against the present petitioner. Allegations and/or charges of corruption levelled against him cannot be automatic and in absence of proof no penal action can be taken against the

petitioner by way of withholding pension and other retiral benefits. Since there is no provision under the aforesaid scheme, for contemplating any disciplinary proceeding against the retired employee, the attempt made by the concerned authorities to withhold pension is contrary to law and liable to be set aside.

27. As held by the Division Bench in the case of Gour Kanti Samanta (supra), this Court is of the view that once the petitioner was allowed to retire without initiating any disciplinary proceeding or initiating any criminal proceeding, the retirement dues of the petitioner cannot be withheld. The Division Bench, in the aforesaid case while passing the judgment, considered the decision in the case of State of West Bengal – Vs. - Haresh Chandra Banerjee & Ors reported in (2006) 7 SCC 651 wherein it was held that pension is not a bounty payable on the sweet-will and the pleasure of the Government. Pension is a condition of service of the employee concerned. Pension and pensionary benefits, which are in nature of deferred remuneration or for service already rendered, have to be released and paid as per the rules. Pension and other pensionary benefits due and payable to an employee are the property of the employee within the meaning of Article 300A of the Constitution of India. No person can be deprived of pension and/or pensionary benefits which are his property, except by authority of law.

28. In view of the observations made above, this Court is of the view that the concerned authorities are not entitled to withhold pension and other retiral benefits of the petitioner. This Court, therefore, directs the respondent no.5, the District Inspector of Schools (S.E.), Malda, to issue clearance certificate in favour of the petitioner within a period of four weeks from the date of communication of this order and the respondent nos.5 and 6 are directed to pass necessary orders for making payment of arrear salaries and other retiral benefits to the petitioner within a further period of six weeks from the date of issuing of clearance certificate.

29. Since there are serious allegations against the petitioner about the financial irregularities involving Madrasah fund which was, in fact, paid from the Government Exchequer and is part of public money and inasmuch as the authorities initiated enquiry against the petitioner to reveal the truth but could not be able to give a complete shape, the State authorities will be entitled to initiate independent appropriate proceeding against the petitioner if allegation of financial irregularities and/or misappropriation of

money could be proved through such proceedings. The State authorities shall also be entitled to recover the defalcated Government fund, if any. State authorities shall also be entitled to initiate proceeding after proper enquiry against not only the Headmaster/petitioner but also against such other persons against whom materials would be revealed as regards misappropriation of public money and commission of criminal breach of trust.”

Considering the facts and circumstances of the case as appears on perusal of relevant records available including Writ Petition, affidavit-in-opposition and reply and supplementary affidavit, submission of the parties and the judgment relied upon by the petitioner as referred above it appears to this Court that inaction on the part of the respondents Teacher-in-charge/Headmaster of the School concerned in issuing ‘No Liability Certificate’ in favour of the petitioner till date in spite of repeated request after his retirement on 30th June, 2020 for disbursement of his pensionary benefit as per Pension Payment Order (PPO) dated 24th February, 2021 and withholding of all retirement benefits by the respondent without proof of any allegation or charge and without holding any enquiry or initiating any disciplinary proceeding against the petitioner during tenure of his service and allowing him to retire and in view of admitted facts as appears from record that even on date no any disciplinary proceeding is pending against the petitioner against the aforesaid allegation, action of the respondent School Authorities concerned not issuing ‘No Liability Certificate’ and withholding of all retirement benefits of the petitioner including pension, is unjust, unfair, malafide, arbitrary and illegal.

In view of the discussion made above this Writ Petition is allowed by passing the following order/directions:

1) Without going into the merit or legality of the Memo dated 15th September, 2021 issued by the Commissioner of School Education, West Bengal from which only allegation appears against the petitioner is payment of audit fee from School Fund amounting to Rs. 24,000/- to unauthorised appointed Auditor for the purpose of audit of School relating to relevant period

which was the prerogative of the Commissioner according to him and was recoverable from the terminal benefit of the petitioner and accordingly considering the aforesaid Memo dated 15th September, 2021, which has been annexed to the supplementary affidavit by the respondents, petitioner is directed to pay to the School Authority the aforesaid cost of audit amounting to Rs. 24,000/- within two weeks from date of intimation by the respondent Headmaster of the School concern about the mode of such payment, that is, by Cheque/Bank draft etc. and in whose name/authority such payment is to be made and such intimation of mode of payment will be communicated by the Headmaster of the School concerned to the petitioner within a week from the date of communication of this order;

2) Headmaster of the School concerned within a week from the date of receipt of the aforesaid payment of audit cost from the petitioner, shall issue and send 'No Liability Certificate' in favour of the petitioner to the Treasury Officer concerned Barasat – II, through the District Inspector of School (SE), Kolkata with intimation to the petitioner, for the purpose of disbursement of pensionary benefit to the petitioner as per Pension Payment Order (PPO) dated 24th February, 2021 and all other post retirement arrears.

3) The Director of Pension Provident Fund/respondent no. 2 and District Inspector of School (SE), Kolkata/respondent no. 3, within 6 weeks from the date of receipt of such 'No Liability Certificate' from the Headmaster of the School shall pass appropriate orders for payment of pension and all other arrears/retiral benefits in favour of the petitioner.

This Writ Petition being WPA No. 9745 of 2022 stands disposed of accordingly with no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Md. Nizamuddin, J)