

15 22.2.2022
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W.P.A. 9901 OF 2009

(Via Video Conference)

Sri Suranjan Saha

Vs.

The State of West Bengal & Ors.

Mr. Himadri Sikhar Chakraborty
Ms. Barnali Gantait.

.... For the Petitioner

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee.

... For the Respondent/
State

Mr. Supriyo Chattopadhyay
Ms. Iti Dutta.

.... For the Respondent
No. 3/DPSC

Affidavit-in-reply, filed on behalf of the petitioner, is taken on record.

The petitioner was a Stenographer in the District Primary School Board, West Dinajpur and subsequently District Primary School Council, West Dinajpur presently, Dakshin Dinajpur. He was appointed in the said post on 22nd June, 1969 and after successfully completing his tenure retired on 31st August, 2008. Dispute crops up due to issuance of a Memo Dated 9th September, 2008, issued by the Assistant Director, Pension, Provident Fund & Group Insurance, West Bengal whereby pay of the petitioner was fixed at Rs.2045/- with effect from 1st June, 1989 instead of Rs.2110/-, such re-fixation was reflected in the Pension Payment Order whereby it was shown that Rs.80351/- was found to have been

overdrawn by the petitioner, a copy of which is placed before this Court during the course of hearing. Retiral benefits have been released in favour of the petitioner upon deducting the alleged overdrawn amount to the tune of Rs.80351/-. The Pension Payment Order is taken on record.

Mr. Himadri Sikhar Chakraborty, learned advocate appears on behalf of the petitioner and submits that the refixation made by the Assistant Director, Pension Provident Fund & Group Insurance, West Bengal, vide Memo dated 9th September, 2008 is wrong in view of the order passed by a coordinate Bench on 14th May, 1991 on a writ petition filed by the petitioner being C.O. 1960 (W) of 1990. Such writ petition was disposed of on 14th May, 1991 thereby directing the respondent authorities to release benefits of Intermediate Selection Grade to the petitioner.

According to the petitioner, in view of sanction of Intermediate Selection Grade benefits as per the order dated 14th May, 1991 of this Court subsequently such refixation cannot be made.

Another limb of submission of Mr. Chakraborty is against deduction of alleged overdrawn amount of Rs.80351/- from the retiral dues of the petitioner which cannot be made after refixing the pay of the petitioner with effect from 1st June, 1989 by issuing the impugned Memo dated 9th September, 2008 when the petitioner

retired prior to such refixation on 31st August, 2008. Therefore, according to the petitioner, after superannuation under the garb of overdrawn amount no deduction can be made from the retiral benefits.

Mr. Chattopadhyay, learned advocate appears on behalf of the State respondents and submits that the refixation which was made with effect from 1st June, 1989 by fixing pay of the petitioner at Rs.2045/- instead of Rs.2110/- is not related to the benefits released under Intermediate Selection Grade pursuant to the order of the coordinate Bench dated 14th May, 1991 rather benefit of increment was withdrawn in terms of Clause 3(i) of the Memorandum dated 3rd January, 2002 being No.10-SE(B).

On placing reliance upon Clause 3(i) of the Memorandum dated 3rd January, 2002, Mr. Chattopadhyay has defended the decision of refixation of pay of the petitioner made vide Memo dated 9th September, 2008 with effect from 1st June, 1989.

This Court has considered the submissions made by the learned advocates representing the parties. For better understanding of the issue involved in this writ petition, Clause 3(i) of the Memorandum dated 3rd January, 2002 is quoted below :

“3. This general scheme of career advancement will, however, be subject to provisions undernoted :

i) An employee who has already moved to the next higher scale after 18 years of service in terms of ROPA Rules 1981 [Para 5 of G.O. No.492-Edn(B) dt. 26.10.81] will be deemed to have got the benefit of movement to the first higher scale. On completion of total service of twenty years without any further promotion/appointment to higher scale of pay he will now get an advancement to the second higher scale. If an employee got benefit under Para 16(2) of G.O. No.33-Edn(B) dt. 7.3.90 he will have to forego such benefit on the date of getting career advancement benefit under this Order. In such a case the pay of the employee shall be refixed after disallowing the benefit of increment from the date of allowing such benefit.

On perusal of such Clause 3(i) it appears that while refixing pay of the petitioner with effect from 1st June, 1989, incremental benefit under Clause 16(2) of G.O. No.33 Edn.(B) dated 7th March 1990 was withdrawn since the petitioner was sanctioned next higher scale after successfully completing 18 years of continuous service in terms of ROPA Rules 1981 and subsequently got the benefit on successfully completing 20 years' service upon upwardly refixing the pay of the petitioner in the next higher scale on applying the said Clause 3(i).

This Court does not find any anomaly in the refixation made by the respondent authorities which is reflected in the Memo dated 9th September, 2008.

Since such refixation has been made after the superannuation of the petitioner on 31st August, 2008, this Court directs the concerned respondent authorities to refund Rs.80351/- to the petitioner within a period of six weeks from date since such benefit has not been derived by the petitioner by mis-representation and fraud and no case has been made out to that extent by the respondent authority.

However, the respondent authorities shall be at liberty to give effect to such refixation which has been made vide issuing Memo dated 9th September, 2008, issued by the Assistant Director, Pension, Provident Fund & Group Insurance, West Bengal prospectively by refixing the pension of the petitioner on fixing the pay of the petitioner at Rs.2045/- on and from 1st June, 1989.

With the above direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously on usual undertaking.

(Saugata Bhattacharyya, J.)