02. 21.12.2022
bd. Ct.15

W.P.A. 27469 of 2017

Minu Rana & Ors.
-vs-
The State of West Bengal & Ors.

Mr. Ekramul Bari
Ms. Tanuja Basak
... for the petitioners.

Mr. Susanta Pal
Mr. Prabir Kumar Ray
... for the State

Petitioner being the headmaster of a high school retired on superannuation on 30th November, 2011 and was lamenting for release of retiral dues till his death on 14th November, 2017. Nothing was paid towards retiral dues which he was entitled to due to his superannuation on 30th November, 2011 till his death.

This writ petition was instituted on 10th November, 2017, four days before his death on 14th November, 2017 claiming release of retiral dues on setting aside the decision of the District Inspector of Schools (SE), Paschim Medinipur, being the respondent no, 3, as contained in memo dated 16th October, 2017.

It has been contended on behalf of the petitioner that he was appointed initially on 1st March, 1988 with pass graduate degree in language group in a high school and was sanctioned pass graduate scale of pay. Subsequently, petitioner obtained post graduate qualification in Bengali in 1990 from Rabindra Bharati University and was allowed post graduate scale of pay on and from 1st March, 1992. Thereafter, petitioner joined as Headmaster on 1st January 1998 in the Kuldiha Saradamayee Junior High School (hereinafter referred to as the "said school") and worked there till date of superannuation on 30th November, 2011.

It has been submitted on behalf of the petitioner that till the date of his superannuation he was allowed to enjoy post graduate scale of pay and there was no attempt on the part of the respondent authorities to refix the pay of the petitioner denying such higher scale of pay. It has also been submitted that there was no fraud or misrepresentation on the part of the petitioner in receiving post graduate scale of pay, therefore, after retirement on the plea of erroneous sanctioning of post graduate scale of pay his retiral dues cannot be withheld. Petitioner has prayed for necessary direction upon the concerned respondent authorities to release entire retiral dues upon quashing the memo dated 16th October, 2017 issued by the respondent no. 3.

Mr. Pal, learned advocate representing the State respondents submits on instruction that repeatedly District Inspector of Schools forwarded the pension case of the petitioner to the office of the Director of Pension, Provident Fund and Group Insurance, West Bengal, and lastly it was resubmitted on 17th November, 2022 by the respondent no. 3 in the office of the Director of Pension, Provident Fund and Group Insurance being the respondent no. 6. It has further been contended on behalf of the State respondents that due to absence of approval in support of sanctioning post graduate scale of pay with effect from 1st March, 1992 the pay fixation could not be finalised on the date of superannuation of the petitioner and there was no formal fixation of pay in terms of ROPA 2009 which resulted in withholding of retiral dues in favour of the petitioner.

This Court has heard the learned advocates representing the parties and perused the relevant records including the decision of the respondent no. 3 as contained in memo dated 16th October, 2017.

Indisputably petitioner was allowed to enjoy post graduated scale of pay on acquiring higher qualification in the relevant subject with effect from 1st March, 1992 and during the long tenure of the petitioner first as an assistant teacher subsequently as headmaster no objection was raised by the respondent authorities relating to fixation of pay of the petitioner. There is nothing on record which goes to show that contemporaneous objection was raised by the respondent no. 3 or the Commissioner of School Education pointing finger at the fixation of pay of the petitioner in post graduate scale. It is known that after release of pay in favour of the petitioner in post graduate scale with effect from 1st March, 1992 ROPA 1998 came into existence and for getting the benefit of higher scale of pay in terms of ROPA 1998 a nod from the respondent no. 3 is required in connection with exercise of option by the petitioner to come under the revised scale of pay. Respondent no. 3 had the opportunity to refix the pay of the petitioner in terms of ROPA 1998 which was not done which goes to show that there was no anomaly in the matter of sanctioning post graduate scale of pay in favour of the petitioner with effect from 1st March, 1992.

It is trite law now as enunciated by the Apex Court in the judgments reported in **(2015) 4 SCC page 334 (State of Punjab & Ors. –vs- Rafiq Mashi (White Washer) & Ors.** and another reported in **2022 SCC online SC 536 (Thomas Daniel –Vs- State of Kerala & Ors.)** that after superannuation of the employee recovery of excess amount upon downgrading pay is impermissible provided benefit of higher fixation is not obtained by the employee concerned on the exercise of fraud or misrepresentation.

In aforesaid conspectus and placing reliance on the law laid down by the Hon'ble Apex Court in **Rafiq Mashi (White Washer)** (supra) and **Thomas Daniel** (supra) the decision of the respondent no. 3 as contained in memo dated 16th October, 2017 stands aside.

The concerned authorities are directed to take necessary steps to release all retiral dues including pension and family pension in favour of the retired teacher and after death of the retired teacher in favour of the legal heirs of the decease retired teacher at an early date.

Since it has been submitted by Mr. Pal, learned advocate representing the State respondents that pension papers have been resubmitted on 17th November, 2022 in the office of the Director of Pension, Provident Fund and Group Insurance the Director of Pension, Provident Fund and Group Insurance is directed to issue pension payment order within two weeks from the date of communication of this order. On issuance of pension payment order the respondent no. 3 as well as the concerned Treasury Officer, being respondent no. 8 are directed to release the financial benefits in favour of the petitioner within four weeks thereafter.

If Provident Fund due has not been paid to the petitioner in the meantime the concerned respondent authorities are directed to release the same within fortnight from the date of communication of this order.

The interest as claimed by the petitioners has not been delved into while considering the present writ petition and after release of the retiral dues in favour of the petitioners it will be open to them to approach the concerned authorities for payment of interest for delayed payment of retiral dues.

With the aforesaid direction, the writ petition stands disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)