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WPA 10519 of 2018

Dr. Sunil Kumar Brahmachari
Vs.
The State of West Bengal & Ors.

Mr. Gopal Ghosh
... For the petitioner.

Ms. Lina Majumder
Ms. Manju Sinha
... For the University.

Mr. Amal Kumar Sen, AGP,
Mr. Lal Mohan Basu
... For the State.

The petitioner's career trajectory can be traced back to 1973 when he was appointed as a Plant Breeder in the year 1973 at the Kalyani University. Subsequently, he was appointed as the Registrar (Acting) of Bidhan Chandra Krishi Viswavidyalaya (in short, BCKV) on January 05, 1987 and on April 13, 1995 the petitioner was appointed to the post of Registrar of BCKV. He ascended to the position of the Vice-Chancellor at Uttar Banga Krishi Viswavidyalaya on February 01, 2001, while still retaining the lien to the post of Registrar under BCKV. He retired from the post of Registrar on January 31, 2007.

The petitioner approached this Court by filing a writ petition, W.P. 4276 (W) of 2012 alleging that in spite of repeated representations, the respondent authorities did not release his pensionary benefits for a dispute pertaining to some alleged advances drawn by him. The said writ petition was disposed of on January 14, 2016, by a Coordinate Bench of this Court.

The relevant part of the said order is quoted below:

> *"A perusal of the affidavit-in-opposition filed by the respondent no.5 clearly reveals that, according to the BCKV authorities, only an amount of Rs.4,02,412/- is remaining unadjusted inclusive of personal TA advances and that the amount of Rs.95,295/- pertaining to the period from 14th October, 2000 to 31st January, 2001 has also been recovered from the petitioner. It has also been averred that an amount of Rs.15,16,614.95/- as drawn by the petitioner for running the regular functions of the Jhargram Regional Research Station was examined and adjusted in the month of May, 2011 and that save and except an amount of Rs.4,02,412/- all other dues had been realized. The amount of Rs.95,259/- pertaining to the period from 14th October,2000 to 31st January, 2001,as indicated in the memorandum dated 19th January,2007 at page 147 of the writ application, has also been recovered.*
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> *A perusal of the audit report, as produced before this Court, reveals that the appointment of the petitioner as Registrar of BCKV was approved by the respondent no.4*

by an order dated 10th April, 1995 and that such appointment was held to be illegal as intimated by the Department of Agriculture, Education Branch by an order dated 28th November, 2007. In the said report the Audit Officer has observed that as the appointment of the petitioner was termed to be illegal the retirement benefits cannot be ascertained until further decision. Such observation of the Audit Officer is not acceptable to this Court. Ten months subsequent to the retirement of the petitioner, his appointment to the post of Registrar, way back on 13th April, 1995 cannot be declared to be illegal and the period of service on and from 14th October, 2000 to 31st January, 2001 cannot be directed to be construed as break in service. Upon retirement the master-servant relationship ceases and the relationship exists only for the purpose of payment of terminal benefits on the basis of the situation existing on the day of retirement. Furthermore, neither any disciplinary proceeding nor any other judicial proceeding is pending against the petitioner. However, the issue as to whether the said amount of Rs.4,02,412/- is due from the petitioner cannot be determined by this Court as the same involves disputed question of facts which require consideration of evidence and documents which are not on record and prior to determination of the said issue the claim for payment of interest cannot be decided.

In the said conspectus, I am of the opinion that the petitioner's pensionary benefits cannot be withheld any further and that appropriate direction needs to be issued upon the respondents towards disbursement of the same.

Accordingly, the BCKV authorities, including the respondent no.5, are directed to prepare and complete the relevant records pertaining to the pensionary benefits of the petitioner and to issue the pension sanction order in favour of the petitioner and to send necessary requisition to the Government within a period of three weeks from the date of communication of this order.

The petitioner is also directed to meet with the respondent nos.4 & 5 in course of a week from the date of communication of this order and to put his signature on the relevant records as required.

Within a period of four weeks from the date of receipt of all the records from the BCKV authorities, the State respondents shall disburse the pensionary benefits of the petitioner including the gratuity amount, upon deduction of an amount of Rs.4,02,412/-.

The dispute as to whether the said amount of Rs.4,02,412/- is payable by the petitioner to the BCKV authorities needs to be relegated to the respondent no.14.

Accordingly, the said respondent no.14 is also directed to take a decision as to whether the said amount of Rs.4,02,412/- is

> *due and payable by the petitioner to BCKV, upon granting an opportunity of hearing to the petitioner and the BCKV authorities and to communicate such decision to the petitioner and the respondent no.5, within a period of four weeks from the date of disbursement of the pensionary benefits.*
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> *It is made clear that the petitioner's prayer for interest towards belated disbursement of retiral benefits has not been considered by this Court and the said issue is kept open to be urged by the petitioner before the appropriate authority, in accordance with law.*
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> *With the above observations and directions the writ application is disposed of."*

It appears that after the said order, his retiral dues were released on April 27, 2015 in the amount of Rs. 35,46,822.87/-.

The petitioner thereafter has filed the present writ petition with the following prayers:

> "a) A writ of or in the nature of Mandamus commanding the respondents to recall, cancel, rescind the order of the Secretary, Department of Agriculture, Government of West Bengal, dated 30.05.2017, in so far as the same holds that a sum of Rs. 54,600/- is due from the petitioner, as "unadjusted advance",

b) A writ of or in the nature of Mandamus, commanding the respondents to recall, cancel, rescind, quash withdraw and/or set aside the order dated January 19, 2007 issued by the Vice-Chancellor, BCKV, directing deduction/realization from his salary for the month of January 2007 and other dues, an amount of Rs. 95,259/-, paid to the petitioner as his salary as Registrar B.C.K.V. during the period from 14.10.2000 to 31.01.2001, as well as the Government of West Bengal, Agriculture Department communication bearing No.3170-Edn/AG/O/3E(V)-01/2001 dated 04.12.2006 and No. 73-Edn-Ag/O/3E(V)-01/01 dated 05.01.2007, in terms of which the said order dated 19.01.2007 was alleged to have been passed, and to refund the said amount of Rs. 95,259/- to the petitioner with interest at the rate of 18% per annum;

c) A writ of or in the nature of Mandamus and/or such other writ or writs commanding the respondents Nos. 1 to 5 to release all outstanding retirement benefits and pension and/or commuted value thereof of the petitioner, together with 15% interest, on all dues with effect from 01.02.2007, upon regularising his personal file and service book;

d) A writ of or in the nature of Mandamus commanding the respondent No. 4 to initiate an enquiry to find out the reasons/cause for the petitioner unnecessary harassment by and/or at the instance of the respondents Nos. 8 to 11 and make them personally liable to compensate the petitioner.

Regarding prayer (a), it has been submitted by Mr. Ghosh, learned advocate appearing for the petitioner, that ultimately the State found that only an amount of Rs. 13,100/- was due from the petitioner as an unadjusted advance. During the pendency of the writ petition the said sum has been adjusted against the dues payable to the petitioner, and therefore the petitioner had no more grievance related to prayer ‘a’ of the writ petition.

Regarding prayer (b), it appears that the University has deducted a sum of Rs. 95,259/- from the petitioners retiral dues as the relevant Vice-Chancellor found that during the period October 14, 2000 to January 31, 2001 both the petitioner and one P.K.

Gupta drew salary for the post of Registrar. The petitioner retired from service on January 31, 2007. The said order of deduction was made only on January 19, 2009, only a few days before his retirement. Such deduction was impermissible in view of the law laid down by the Supreme Court in the judgment reported at **(2015) 4 SCC 334 (*State of Punjab v. Rafiq Masih (White Washer)***, wherein it was held as follows:

> "18**.** It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
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> (*i*) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
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> (*ii*) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
>
> (*iii*) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
>
> (*iv*) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid

> accordingly, even though he should have rightfully been required to work against an inferior post.
>
> (*v*) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

Therefore, in my view the order dated January 19, 2007 issued by the Vice-Chancellor of BCKV cannot be sustained. Accordingly, the same is set aside.

The University shall refund the sum of Rs. 95,259/- to the petitioner within a period of one month from date together with an interest of 5% per annum simple interest.

With regard to the claim of interest on the retiral dues, I find that the petitioner's retiral dues were withheld for no fault on his part. Though initially, the university suggested that a sum of Rs. 35,46,822.87/- was due to from the petitioner, the Coordinate Bench in its order dated January 14, 2016, observed that only an amount of Rs.4,02,412/- remained unadjusted. During pendency of this writ petition it was ultimately found that only a sum of Rs.13,100/- was liable to be recovered from the petitioner. This fact has been admitted by the University in paragraph 7 of its affidavit-in-opposition.

Mr. Sen, learned senior advocate appearing for the State submits that the State cannot be held liable for the delayed payment, it is the action of the University which caused delay in releasing the retiral dues of the petitioner.

Mrs. Lina Majumder, learned advocate representing the University submits that the delay was caused due to two communications received by the University from the State Government dated December 04, 2006 and January 05, 2007.

Be that as it may, the fact remains that at least the petitioner was not at fault. Therefore, the petitioner is entitled to interest on his retiral dues. The position of law has been clarified by the Supreme Court in the judgment reported at **(2014) 8 SCC 894** (**D.D. Tewari (Dead) – Versus - Uttar Harayana Bijli Vitran Nigam Limited)**.

Having regard to the facts and circumstances of the case, I dispose of this writ petition giving a direction upon the University to pay 5% simple interest on the arrear pension, commuted value, leave salary and gratuity from the date of retirement of the petitioner to the date of actual payment to the petitioner.

Additionally, it is reiterated that the petitioner will be entitled to refund of Rs.95,259/- together with 5%

simple interest from the date of his retirement to the date of actual payment.

Let such interest amount be paid within one month from the date of communication of this order.

With the aforesaid directions, **WPA 10519 of 2018** is disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)