

05.12.2023
Sl. No. 51.
Suman
Ct.No.25.

WPA 17280 of 2007
With
CAN 1 of 2020 (Old CAN 650 of 2020)

Sudip Bose
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Ms. Keya Sutradhar
..for the petitioner

Mr. Shantanu Mitra
Mr. Benazir Ahmed
..for the State

A selection process was undertaken by the competent authority of the Basunagar Jr. High School (in short, the school), P.O.-Madhaymgram, District-North 24 Parganas to fill up the post of Assistant Teacher in Social Science Group (Geography) in 1987. The petitioner, who graduated in Commerce and pursued M.Com, offered his candidature for the post. He was allowed to participate in the selection process. The petitioner emerged as a successful candidate and accordingly, he was appointed in the post.

The appointment of the petitioner was approved by District Inspector of Schools (SE), North 24 Parganas by his letter *vide*. Memo no.582-G dated 23rd May, 1988 and the approval of the appointment was accorded on substantive basis by the District Inspector of Schools *vide*. his Memo. dated 06.03.1990. The petitioner all along drew Honours scale of

pay. Suddenly, the Commissioner of School Education, West Bengal by his memo *vide*. No.346/SC/G dated 30th May, 2005 directed the D.I. of Schools to stop payment of Honours scale of pay to the petitioner and re-fix the pay of the petitioner on the plea that prior permission was given to fill up the post in Social Science Group from the candidate having Geography as combination subject but by giving appointment to the petitioner having qualification of B.Com (Hons.), the school authority had violated the terms and conditions stipulated in the order granting prior permission to fill up the post. As a sequel to the order dated 30th May, 2005, the District Inspector of Schools by his memo. dated 02.08.2005 directed the Secretary of the school to disallow Honours scale of pay in favour of the petitioner.

The memo. dated 30th May, 2005 issued by the Commissioner and the letter dated 2.8.2008 addressed to the Secretary of the School by the D.I. of schools dated 2nd August, 2005 were assailed by preferring the present writ petition.

Record reveals that by passing interim order dated 8th September, 2008, a co-ordinate Bench of this Court restrained the respondent from giving any effect or further effect to the memo. dated 02.08.2005. The interim order dated 8.9.2008 was not complied with. The petitioner was constrained to take out a contempt petition being CPAN 291 of 2009. However, during pendency of the contempt petition, the Honours scale of pay, which was withheld, was released and even the arrear of

pay was also released. Consequently, the contempt petition was disposed of.

During pendency of the writ petitioner, the petitioner retired from service on 31st December, 2019 on attaining the age of superannuation but the retirement benefits of the petitioner have not been released in his favour and hence, an application being CAN 650 of 2020 the writ petitioner has been taken out by the petitioner to bring such subsequent facts on record with a prayer for release all his retirement benefits.

For ends of justice, both the writ petition and the application are taken up together for disposal.

Mr. Bari, learned advocate for the petitioner submits that at the time of offering candidature for the post, the petitioner did not suppress any fact nor he did indulge in any malpractice. Having been appointed in the post, the petitioner had been rendering his service in the post without any blemish till the date of his retirement.

He contends that since the date of joining the petitioner had been drawing Honours scale of pay and suddenly, in 2005 when the petitioner had already completed 17 years' of his service as Assistant teacher in Social Science Group (Geography), a direction was given to stop disbursement of Honours scale of pay in favour of the petitioner. However, in terms of the interim order passed in this writ petition, petitioner was allowed to draw Honours scale of pay till the date of his retirement. He submits that the petitioner has retired from service on 31st December, 2019 but the respondent

has withheld the retirement benefits of the petitioner. He submits that appropriate direction should be given upon the respondents to release the petitioner's retirement benefits, which would be calculated on the basis of Honours scale of the petitioner, as expeditiously as possible.

Mr. Mitra learned advocate being assisted by Mr. Ahmed contends that it is a fact that in violation of the terms and conditions contained in the order whereby the prior permission was granted to fill the post, the School Authority had appointed the petitioner. He submits that the petitioner was not entitled to any relief and prays for dismissal of the writ petition and the application filed in connection therewith.

Indisputably, at the time of offering the candidature for the post, the petitioner did not suppress his educational qualification. Needless to observe that upon scrutiny of his testimonials, the petitioner was allowed to participate in the selection process. The petitioner came out as a successful candidate and hence, he was appointed in the post. The petitioner's appointment in the post was approved by the District Inspect of Schools under an Office Memo No.582/G dated 23rd May, 1988 and approval of his appointment was accorded on substantive basis by a memo. dated 6.3.1990 issued by the District Inspector of Schools and there is no scope to deny that since the date of joining the petitioner had been drawing Honours scale of pay and his pay has been revised from time to time as per extant rules. Admittedly, the petitioner has not suppressed any fact and at the time of

offering candidature for the said post he has not misled the selection committee and even, he has not taken recourse to any manipulation nor did indulge in any mal-practice. The petitioner has served the institute without any blemish till the date of his retirement i.e. up to 31st December, 2019. Suddenly, in 2005 i.e. after the petitioner completed 17 years' of service, the Commissioner of School Education awaking from deep slumber claimed that the school authority had appointed the petitioner in derogation of the terms and conditions stipulated in the order whereby prior permission was granted to fill the up the post and hence, the petitioner was not entitled to get Honours scale of pay. Till the date of retirement, the respondents have released Honours scale of pay in favour of the petitioner and even the respondents did not take any step to assail the interim order passed in writ petition before the appropriate forum.

Even if it is assumed that petitioner was granted Honours scale of pay yet excess payment, if made cannot be recovered from the petitioner since there is nothing to show that the petitioner played any fraudulent role in the process of granting Honours scale of pay. In case of Saiad Abdul Qadir & Ors. Vs. State of Bihar & Ors., reported in (2009) 3 SCC 475, it was held that excess payment made due to wrong fixation of pay cannot be recovered from the employee if excess amount was not paid on account of any misrepresentation or fraud on the part of the employee. In case of Shyam Babu Verma –vs- Union of India & Ors., reported in (1994)2 SCC 521, the Hon'ble Supreme Court

was pleased to hold that excess payment made to the employee cannot be recovered after his retirement if there was no misrepresentation or fraudulent role of the employee in the process of excess payment. In catena of judgments, the Hon'ble Supreme Court of India has granted relief against recovery of excess payment, if such payment is not made on account of mis-representation or fraud etc. on the part of the employee. In case of Sahib Ram –vs. State of Haryana, reported in 1995 (Supp-1) SCC 18, the Principal of the College erroneously gave higher scale of pay to the petitioner therein. Such higher scale of pay was given not on account of fraud and/or misrepresentation of the petitioner and hence, the Hon'ble Court gave relief against recovery of the excess payment. In case of Shankar Nath Sinha v. D.I. of Schools(SE), reported in 2012(5) CalHN 576, a candidate having qualification of B.Com(Honours), Special B.A., B.Ed. was appointed in Social Science Group in 1981. He enhanced his qualification by acquiring Master Degree in Commerce in 1982. He was granted higher scale of pay and such pay was revised from time to time. Subsequently, his pay was reduced on the plea that the higher scale of pay, which was extended to him, was not admissible to him and even, he was asked to refund overdrawal amount. In the meantime, the candidate retired from service. It was held that recovery of overdrawal amount is not permissible and direction was given to disburse the retirement benefits. In the judgment of Shankar Nath Sinha (surpa), it was observed that ROPA, 1981 provides that all

existing secondary school teachers who were appointed with higher qualification in the subject not relevant to their teaching or who improved their qualification subsequent to their appointment in the subject not relevant to their teaching will be allowed the higher scale on qualification basis with effect from 1st April, 1981 or after five years teaching, counting from the date on which the higher qualification was obtained whichever is later. Since that candidate improved qualification, direction was given to re-fix his pay w.e.f. the day following the last date of his M. Com Examination. I express my agreement with the proposition laid down in the judgment of Shankar Nath Sinha(supra).

In the case at hand, the petitioner had been drawing Honours scale of pay since the date of his joining and he did not play any fraudulent role in the process of granting of Honours scale of pay in his favour and now, he has retired from service on 31.12.2019 on superannuation. Hence, after cessation of master-servant relationship, the respondents cannot take steps to recover any amount from the retirement benefits of the petitioner. Moreso, by applying the principle of estoppel, it can be held that the respondents cannot claim that the petitioner was not entitled to get Honours scale of pay. It would not be out of context to mention that doctrine of estoppel is applicable against the Government in the exercise of its Governmental, public and executive functions. The Petitioners had taken all the classes allotted to him during his

service tenure. Hence, it would not justified to order re-fixation of his pay after his retirement also.

In view thereof, the Memo No.346-SC-G dated 30th March, 2005 issued by the Commissioner of School Education, West Bengal (annexure P-4) and the consequential order dated 2.8.2005 passed by the D.I. of Schools are set aside.

In course of transformation from feudal to welfare society, the State has introduced retirement benefits scheme to provide security to its employees in their old age and hence, various sorts of benefits like, pension, gratuity etc. have been extended to superannuated employees. The retirement benefits are not bounty payable at the sweet will of the employer. Those are the rewards for past services.

In such factual conspectus, the respondent No.3 is directed to take steps to release the retirement benefits of the petitioner including pension, gratuity etc. on the basis of last drawn pay of the petitioner along with its arrears mounted up since the next date of his retirement after observing all requisite formalities as expeditiously as possible but not later than three months from the date of receipt of a copy of this order.

With the above observation, the writ petition and the connected application are disposed of, however, without any order as to the costs.

(Partha Sarathi Chatterjee , J.)