

01.08.2023
Item No.08
Court No.18
AJ.

W.P.A. 20335 of 2022

Swapan Kumar Sau
-Vs-
The State of West Bengal & Ors.

Mr. Sandip Chakraborty,
Mr. Anindya Bose,
Mr. Diptendu Mandal,
Mr. Mridul Biswas.
.....for the petitioner.

Mr. Santanu Kumar Mitra,
Sr. Govt. Adv.
.....for the State.
Mr. Kanai Lal Samanta.
.....for the respondent no.8.

In the prayers of the writ petition, the respondent no. 8 has been erroneously described as the respondent no. 6, as such leave, as prayed for, is granted to the learned Advocate for the petitioner to correct the said prayers.

In compliance with the direction passed by this Court on July 24, 2023, a report is filed on behalf of the District Inspector of Schools(S.E.) Purba Medinipur, the respondent no. 4 herein, let it be kept with the record.

The petitioner is an Assistant Teacher of Debhog Shyamacharan Milan Vidyapith, Haldia, District - Purba Medinipur and the respondent no. 8 is the ex-Headmaster of the said school.

The petitioner is alleging that the respondent no. 8 is not entitled to receive the pension and other retiral benefits as two criminal proceedings are pending against him.

The petitioner is praying that the disbursement of the said benefits be stopped immediately.

It appears from the record that the criminal proceedings pending against the respondent no. 8 are C.R. Case No. 08 of 2022 and Bhabanipur Police Case No. 220 of 2016 dated July 30, 2016 under Sections 406/120B of the Indian Penal Code, 1860, both at the instance of the petitioner.

The C.R. Case No. 08 of 2022 is arising out of Bhabanipur Police Case No.14 of 2012 (G.R. 63 of 2012) dated January 12, 2012 under Sections 409/506/323 of the Indian Penal Code, 1860. The investigating agency in the said criminal proceeding reported to the learned Magistrate that for lack of evidence, no case has been made out. The petitioner prayed for further investigation but the learned Magistrate declined.

The petitioner, aggrieved thereby, preferred a Criminal Revisional Application before this Court being CRR 450 of 2020. The Revisional Court did not interfere with the order of the learned Magistrate and disposed of the said application vide order dated October 07, 2021 granting liberty to the petitioner to file a petition of complaint before the Magistrate under Section 200 of the Code of Criminal Procedure, 1973.

The petitioner took steps in terms of the liberty so granted and in consequence thereof, the said C.R. Case No. 08 of 2022 was registered against the respondent no. 8.

The petitioner has initiated the other pending criminal proceeding against the respondent no. 8 alleging

that the said respondent being the Headmaster has deducted some amount from his salary without his consent.

The learned advocate for the petitioner submits that Paragraph 19(5) of the West Bengal recognized Non-Government Educational Institution Employees(Death-cum- Retirement Benefit)Scheme, 1981 mandates that an employee against whom a criminal proceeding is pending, is not entitled to get the final pension, gratuity and other retiral benefits, as such the authority has acted illegally in disbursing the full pension and other retiral benefits to the respondent no. 8.

Mr. Samanta, learned Advocate for the respondent no.8 submits that the petitioner has no locus standi to object to the disbursement of the retiral benefits of the respondent no. 8 as the authorities, after consideration of the relevant factors, have sanctioned the pension to the respondent no. 8 and have disbursed his other retiral benefits, the petitioner, for his personal grudge, has initiated all the pending criminal proceedings, which has no nexus with the service of his client.

He further submits that the alleged deduction from the salary of the petitioner was made to recover the loan taken by him from the Credit co-operative society of the teachers.

It appears from the report of the respondent no. 4 that since there is no order from any Court of law prohibiting disbursement of retiral benefits to the respondent no. 8, the authority has acted accordingly.

Heard the learned advocate for the parties and perused the materials-on-record.

The investigating agency proposed to drop the Bhabanipur Police Case No.14 of 2012 for lack of evidence but the petitioner is pursuing cause of the said case with the leave of the Revisional Court in pending C.R. Case No. 08 of 2022.

The other pending criminal proceeding has no nexus with the service of the respondent no. 8.

The Paragraph 19(5) of the Scheme of 1981 prohibits disbursement of the final pension, gratuity etc. of an employee against whom departmental/judicial/proceedings have been instituted/continued.

The scope of the aforementioned Paragraph of the said Scheme of 1981 cannot be enlarged to bring within its sweep a criminal proceeding instituted by a person to pursue his vendetta against an employee. Besides, it is within the domain of the concerned authority to consider whether the pending criminal proceedings attract the aforementioned Paragraph of the said Scheme in disbursing the retiral benefits to the respondent no. 8 or not, the petitioner cannot have any say in the matter as the disbursement of the said benefits to the respondent no. 8 is not affecting any right of the petitioner, in other words, he has no cause of action to file the instant writ petition. The Pension sanctioning Authority, in its report, has opined that there is no order passed by any Court of law prohibiting disbursement of the retiral benefits of the respondent no. 8.

The conduct of the petitioner is highly *mala fide* which is unbecoming of a teacher.

In view of the facts and circumstances discussed above, W.P.A. 20335 of 2022 is dismissed **with costs of Rs. 50,000/-** (Fifty thousand rupees only) to be paid by the petitioner to the respondent no. 8 within two weeks from date, in default, the respondent no. 4 is directed to take steps for realization of the said costs from the salary of the petitioner by five equal monthly installments of Rs. 10,000/- (Ten Thousand rupees only) each and payment thereof to the respondent no. 8.

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

(Biswajit Basu, J.)