

04.09.2023
SL No.4
Court No.8
(gc)

MAT 2766 of 2007
CAN 1 of 2007 (Old No: CAN 9621 of 2007)

Sk. Samsuddin Ahmed
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari,
Sk. Intiaj Uddin,
...for the Appellant.

Mrs. Tapati Samanta,
...for the State.

1. The letter of instruction dated 2nd September, 2023 addressed to the learned State Advocate produced by Mrs. Tapati Samanta is kept with the record.
2. The writ petitioner was an Assistant Teacher of Hazi Ishaque D.U.S. Senior High Madrasah. He retired from his service on 30.09.2000. Thereafter the authorities issued orders dated 3rd October, 2000 and 5th July, 2001 directing recovery due to wrong fixation of pay with effect from 1st April, 1984, as the petitioner had overdrawn a sum of Rs.97,945/-. This was challenged in the writ petition. The District Inspector of Schools (S.E.), Howrah passed a reasoned order on 9th December, 2004 holding that in view of the G.O. vide no.304(6)-Edn(B) dated 21st June, 1983 the date of next increment given to the

petitioner on improving his qualification was to be changed. The post graduate scale of pay (Rs.550-1470/-) was given to him with effect from 22nd November, 1983, on the date he improved his qualification by obtaining Master's Degree. This order is challenged. The impugned order was passed on 15th December, 2006 stating that if there was any mistake in fixing the next date of increment to which he has been entitled, that requires a correction and consequently if any amount is to be refunded by the petitioner, he would be liable to refund that amount. The writ petition was disposed of by directing payment of all benefits to which the petitioner became entitled consequent upon his retirement shall be paid to him with interest at the rate of 10% per annum.

3. The learned Counsel for the State has submitted that the Madrasah has received information that the petitioner is no more and no information is made available at their end.
4. Mr. Ekramul Bari, learned Counsel representing the appellant submits that he is not aware that the writ petitioner is no more.

5. Be that as it may, in view of the fact that the petitioner was not responsible for the wrong fixation of pay scale, we are of the view that he cannot be directed to refund the amount which he had received due to wrong fixation.
6. With the aforesaid modification, the appeal succeeds in part.
7. Accordingly, the appeal and the application stand disposed of.
8. However, there shall be no order as to costs.
9. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)