

16 05.7.2023
Sc Ct. no.22

WPA 28504 OF 2017

Amar Nath Ghosal

Vs.

State of West Bengal & Ors.

Mr. Tulsi Das Maiti
Mr. Pradip Kr. Ghosh.

....For the Petitioner

Mr. Ratul Biswas
Mr. Kaushik Chowdhury.

....For the State

This is a hearing matter upon affidavits.

Mr. Tulsi Das Maiti, learned counsel appearing for the petitioner contended that the ***petitioner retired on February 28, 2015 from the post of Head Master from one Medgachi High School (H.S.), Burdwan at that point of time.***

Relying upon a document dated ***August 13, 2014, Annexure-P1 at page 19*** to the writ petition Mr. Maiti, learned counsel for the petitioner submitted that, on the basis of ***the said document issued under the signature and seal of the Joint Secretary, School Education Department, Secondary Branch***, the petitioner had been receiving his salary and other employment benefits. He had received such amount till the date of his retirement. The petitioner claimed that, ***the entitlement of the petitioner was fixed on the basis of the said document dated August 13, 2014.***

Subsequently, after the retirement of the petitioner, the ***Pension Payment Order dated June 4, 2015, Annexure-P2 at page 21 to the writ petition*** was issued pursuant to the decision and recommendation of the respondent no.3, under which the pay scale of the petitioner was ***reduced*** and ***the petitioner has been receiving his employment benefit after retirement on the basis of the reduced pay scale mentioned in the said Pension Payment Order.***

Mr. Maiti, learned counsel for the petitioner contended that, the respondent no.3 in arbitrary exercise of his power and totally in an illegal and wrongful manner had modified, altered and ultimately reduced the pay scale of the petitioner which the petitioner had received all along in terms of the said document dated ***August 13, 2014.***

Mr. Maiti also submitted that, the document dated ***August 13, 2014*** was issued by the ***Joint Secretary School Education Department, Secondary Branch*** and the ***Commissioner of School Education Department, West Bengal*** was requested to do the needful in terms of the content of the said document. ***The said document was also vetted by the Director of Accounts.*** In such situation, Mr. Maiti contended that, the respondent no.3 with a subordinate hierarchical authority could not have modified the said provisions mentioned in the said document dated ***August 13, 2014*** and recommended for reduced pension payable to the petitioner.

Being aggrieved by such an illegal and arbitrary action on the part of the respondent no.3 on the basis whereof the ***Pension Payment Order dated June 4, 2015, Annexure-P2 at page 21 to the writ petition*** was issued, the instant writ petition was filed.

Mr. Kaushik Chowdhury, learned counsel led by Mr. Ratul Biswas, learned counsel appeared for the respondent nos. 1 to 4. Learned State counsel had placed reliance on the ***two reports filed on behalf of the respondent no.3 in the form of affidavits. The first one of such reports was affirmed on January 24, 2019 and the second one was affirmed on January 25, 2019.***

Learned State counsel submitted that, after considering all the relevant Government Orders, the respondent no.3 had exercised its power and fixed the pay scale of the petitioner and on the basis of such recommendation, the ***Pension Payment Order*** was prepared. The petitioner has been receiving his pension regularly in terms of the said ***Pension Payment Order dated June 4, 2015, Annexure-P2 at page 21 to the writ petition.***

Per contra, Mr. Maiti referred to the two exception affidavits filed by the petitioner. The first of such affidavit was affirmed on ***February 5, 2019***. The second one was affirmed on ***February 6, 2019***. Mr. Maiti submitted that, the contention of the State employer made in the said two reports are not tenable in law and the same was duly denied

and explained by the petitioner through the said two exception affidavits.

Learned counsel for the petitioner relying upon **two Government memoranda** issued by the School Education Department, West Bengal, **the first memorandum bearing No. 181-SE(B)/5B-1/09 dated October 8, 2009 and the second memorandum bearing No.30-SE(B)/5B-1/2009 dated February 10, 2010**, submitted that, these two memoranda would make it amply clear as to the petitioner's entitlement due to his higher responsibility, as he was employed as the Head Master of the concerned school.

He further submitted that, the respondents had failed to appreciate the purport, scope and content of the said two Government memoranda and, accordingly, the pay scale of the petitioner, fixed in terms of the said document dated August 13, 2014 issued by the Joint Secretary, was modified/alterd and ultimately the pay scale was reduced by the respondent no.3 on the basis whereof the said **Pension Payment Order** was issued.

Considering the rival contentions of the parties and considering the materials on record, at the threshold it appeared to this Court that, the provisions of all the said Government memoranda and their applicability on the claim of the petitioner need to be decided and gone into. For such purpose, several documents and records are required to be looked into and several factual matrix to be gone into. The State had also referred to several provisions from several Government Orders as would be evident from

their two reports. Whether those provisions would apply in the facts and circumstances under which the petitioner was situated and raised his claim also would be required to be decided.

Such fact-finding inquiries, as discussed above, cannot be made by a Writ Court.

The petitioner having served the State employer for a considerable period of time had raised a claim on account of his pension and other retiral benefits, the petitioner has a right to know the fate of his claim.

For all those reasons, to subserve justice, the ***petitioner shall be at liberty to make a comprehensive representation before the Principal Secretary, School Education Department, West Bengal within three weeks from date and such representation shall not travel beyond the case made out in the writ petition.***

In the event such a comprehensive representation is submitted, the concerned Principal Secretary upon issuing a seven days' prior hearing notice to the petitioner, jurisdictional District Inspector of Schools and the respondent no.5 and after giving them an opportunity of hearing, shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise, as directed above, shall be carried out and completed by the concerned Principal Secretary ***positively*** within a period of ***six weeks*** from the date of receiving the said comprehensive representation from the petitioner.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner and the petitioner and all other relevant parties, as directed above, shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the concerned Principal Secretary. However, ***the case of the parties shall not travel beyond the pleading and the documents filed in connection with this writ petition.***

While deciding the issue, the concerned ***Principal Secretary shall consider the said two Government memoranda dated October 8, 2009 and February 10, 2010 as mentioned above and also the two reports filed on behalf of the respondent no.3.***

It is made clear that, this order shall not create any equity or right in favour of the petitioner and the claim of the petitioner shall be decided by the concerned Principal Secretary on the basis of the available materials before him strictly in accordance with law.

In the event the reasoned decision goes in favour of the petitioner, the ***respondent no.3 and the respondent no.4 immediately shall give effect to and complete all formalities under the said reasoned decision positively within a period of four weeks from the date of communication of the reasoned order.***

It is further made clear that, in the event the petitioner succeeds to his claim and becomes eligible to receive his employment benefit in terms of the said document dated

August 13, 2014 Annexure-P1 at page 19 to the writ petition, then the entire arrear amount payable to the petitioner in accordance with law shall be paid to the petitioner along with interest @8% per annum since the date of his entitlement. Such payment shall also be made to the petitioner in the event he becomes entitled to it by the respondent nos. 3 and 4 within the said period of ***four weeks as directed above.***

In the event the petitioner succeeds to his claim the ***revised Pension Payment Order shall be issued by the respondent no.4 in favour of the petitioner within a week from the date of the said reasoned order to be communicated.***

On the above terms this writ petition, ***WPA 28504 of 2017*** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)