

5 17.7.2023
Sc Ct. no.22

WPA 29713 OF 2015
with
I.A. No. CAN 1 OF 2020
(Old No. CAN 5745 OF 2020)
with
I.A. No. CAN 2 OF 2020
with
I.A. No. CAN 3 OF 2020

Sachindranath Misra
Vs.

State of West Bengal & Ors.

Mr. Sachindranath Misra

...Petitioner
(in person)

Mr. Supriyo Chattopadhyay
Mr. Mrinal Kanti Ghosh.

...For the State

Three affidavits-of-service filed in Court, are taken on record.

This is a hearing matter upon affidavits.

The petitioner appeared in person.

Mr. Supriyo Chattopadhyay, learned Additional Government Pleader appeared for the respondent nos. 1 and 3.

The petitioner claimed to be a retired Assistant Teacher who retired on **September 30, 2015** from one **Midnapore Collegiate School (H.S.), District – Paschim Medinipur** presently. The petitioner acquired the **Master's degree in History**. The **relevant subject** for which the petitioner was appointed at the post of Assistant Teacher was **Geography**. The petitioner claimed the benefit of higher pay scale commensurating

with his Master's degree. The petitioner contended that since prior to his retirement the petitioner had been receiving the higher pay scale commensurating with his Master's degree though in **History** even though the petitioner was a **Geography** teacher. The petitioner claimed such benefit should have been and should be extended to the petitioner with an effect on his retiral benefits.

Referring to a document dated **November 9, 2015, Annexure-P12 at page 84 to the writ petition**, the petitioner submitted that, the jurisdictional District Inspector of Schools (S.E.) [for short the D.I.] had sanctioned the pay scale of the petitioner after his retirement commensurating with his **Master's degree for non relevant subject with effect from September 6, 1987**.

Mr. Mrinal Kanti Ghosh, learned advocate led by Mr. Supriyo Chattopadhyay, learned Additional Government Pleader referring to a document dated **January 22, 2015 issued by the D.I. at page 118 to I.A. No. CAN 2 of 2020** submitted that, after realising its mistake, the D.I. raised its objection to the effect that, the higher pay scale which was being sanctioned in favour of the petitioner commensurating with his Master's degree was a mistaken act on the part of the D.I. , **the school authority was requested to clarify the pay scale of the petitioner with effect from July 6, 1982, i.e. the**

date following the last date of M.A. Examination in terms of a **Government Order dated July 31, 1981**, as mentioned therein.

Referring to **page 119 of the said I.A. No. CAN 2 of 2020** it was submitted by the petitioner that, by a communication dated **January 29, 2015**, the relevant school clarified to the D.I. that, **due to the shortage of History Teacher at the relevant point of time, the Managing Committee of the concerned school decided and requested the petitioner to teach History along with Geography** and hence, the Managing Committee of the concerned school approved the higher pay scale in favour of the petitioner. For the purpose of retirement when the **service record** of the petitioner was required to be prepared and was submitted on **May 9, 2014** along with the **Pension Booklet, Annexure-P7 at page 59 of the writ petition**, it was then detected by the office of the D.I. that, since the petitioner had received the higher pay scale during his employment tenure, it was an amount alleged to have been overdrawn by the petitioner.

The petitioner then submitted that, only about 8 - 9 months before his retirement, the school authority was asked to clarify the position as would be evident from the communication dated **January 22, 2015, Annexure-P8 at page 79 to the writ petition**.

In such circumstance, since the retiral benefits were not released to the petitioner as per his entitlement,

the petitioner applied before this Court through the instant writ petition. By an order dated **June 14, 2019 at page 140 to I.A. No. CAN 2 of 2020**, an interim direction was passed by a coordinate Bench and in terms thereof, the D.I. issued a sanctioned letter dated **February 9, 2017 at page 145 to the said I.A. No. CAN 2 of 2020** for paying **provisional pension** to the petitioner. The **petitioner has been receiving such provisional pension.**

In view of the above, the learned counsel for the State submitted that **since the Master's degree was in History which was not the relevant subject and the same being Geography** for which the petitioner was appointed as an Assistant Teacher, the petitioner was and is not entitled to receive any benefit for acquiring such Master's degree. Learned advocate for the State also submitted that, even if the petitioner is entitled to such benefit **it was since 1987 and not from 1982.** Accordingly, he submitted that the amount was withdrawn since 1982 by the petitioner had been overdrawn and was not returned by the petitioner.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court first proceeds to decide - **whether the State employer is entitled to recover the alleged overdrawn amount which the petitioner had received since 1982.**

The first objection, raised by the office of the D.I., was dated **January 22, 2015 at page 118 to I.A. No. CAN 2 of 2020** and the **petitioner retired on September 30, 2015**. The law is well settled **In the matter of : State of Punjab and Others vs. Rafiq Masih (White Washer) & Ors., reported at (2015)4 SCC 334**.

Relying upon the said decision **In the matter of : Rafiq Masih (supra)** subsequently, the Hon'ble Supreme Court had pronounced the law on **May 2, 2022 In the matter of : Thomas Daniel –versus- State of Kerala & Ors.** The relevant portion from the said decision **In the matter of : Thomas Daniel** is quoted below :

*“(13) In **State of Punjab and Others v. Rafiq Masih (White Washer) and Others** wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:*

‘8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more

unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

xxx xxx xxx

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 :

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(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."

Applying the facts in the instant case in the light of the law discussed above, it appeared that, recovery from the petitioner were sought to be made when the **first objection was raised by the D.I. on January 22, 2015** and the **petitioner retired on September 30, 2015**, which was within one year from the objection. Inasmuch as, the **petitioner had received this alleged excess**

payment since 1982 which was in excess of five years before the said objection was raised for recovery.

For the foregoing reasons and discussions, the writ petition first ***succeeds and is allowed to the extent*** that, the D.I. and/or the State employer shall not proceed to recover any overdrawn amount as alleged or objected to by the D.I. which had already been paid to the petitioner in any manner whatsoever. ***The objection of or steps for recovery by the State employer, if any, in this score stands set aside and quashed.***

Now, the second limb of relief comes, which the petitioner had sought for. The petitioner claimed that, since **1982** the petitioner had received the Post Graduate pay scale, the State employer shall not and cannot deviate from its stand at this later stage and the ***petitioner shall get all his retiral benefits in terms of such higher pay scale for acquiring Master's degree.***

To consider such plea of the petitioner on the claim of ***higher pay scale commensurating with his Master's degree***, several factual matrix are required to be gone into as to ***whether the petitioner had acquired his Master's degree for the relevant subject for which the petitioner was appointed and whether the petitioner is entitled to receive such Post Graduation pay scale after rendering his service and after receiving such payment since 1982.*** This is not the job

of a Writ Court. ***All such factual inquiry first must be carried out by the D.I.***

Considering the above, to subserve justice, the petitioner shall be at liberty to submit a ***comprehensive representation*** supported by all his documents, records along with the relevant judgments, if any, in his support before the respondent no.3 within a period of ***two weeks from date*** but the same shall not travel beyond the claim made in the writ petition.

In the event, such representation is made, the ***respondent no.3*** shall immediately issue at least a seven days' prior hearing notice to the petitioner and the respondent no. 4 and after granting them an opportunity of hearing shall pass a reasoned order in accordance with law – ***as to whether the petitioner can receive such higher pay scale commensurating with his Master's degree*** and if the claim of the petitioner succeeds then till when such benefits could be extended to the petitioner.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner insofar as his claim on account of ***higher pay scale commensurating with his Master's degree in History is concerned though he was appointed as a Geography teacher.*** The petitioner and the respondent no.4 shall be at liberty to urge whatever points they wish to urge by relying upon whatever documents, records and the relevant rules before the respondent no.3.

The entire exercise as directed above, shall be carried out and completed by the respondent no.3 ***positively within a period of six weeks*** from the date of receipt of such comprehensive representation from the petitioner.

The respondent no.3 shall communicate his reasoned order to the petitioner and the respondent nos. 2, 3 and 4 within a further period of two weeks from the date of the reasoned order to be passed.

Pendency of hearing of the issue before the respondent no.3, as directed above, ***shall not create any embargo in releasing the admitted retiral benefits payable to the petitioner as admitted by the D.I.*** The D.I. shall take all steps for releasing such admitted retiral benefits to the petitioner within three weeks from the date of communication of this order in this regard and communicate the petitioner within such time.

The respondent no. 3 then shall also communicate the quantified amount payable to the petitioner for such admissible retiral benefits to the respondent no.2 forthwith and upon receiving such communication from the respondent no.3 and/or the petitioner, as the case may be. The ***respondent no.2 shall take all consequential steps and release the amount in favour of the petitioner upon receiving the bank account details from him positively within a period***

of three weeks from the date of such communication being received.

It is further made clear that insofar as the claim of the ***higher pay scale of the petitioner commensurating with his Master's degree*** is concerned, after receiving the reasoned decision from the respondent no.3, if the petitioner feels aggrieved, ***he shall be at liberty to take necessary recourse in accordance with law.***

This order shall overrule the decision of the respondent no.3, if any, regarding claim of any alleged overdrawn and after the reasoned order will be passed by the respondent no.3, as directed above, ***Pension papers and the Pension records of the petitioner shall be corrected accordingly in accordance with law, if necessary.***

With the above observations and on the above terms this writ petition, ***WPA 29713 of 2015 stands disposed of, without any order as to costs.***

All connected applications consequentially stand disposed of.

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

(Aniruddha Roy, J.)