

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Aniruddha Roy

W.P.A. 10911 of 2020

Sri Subhash Mahato

Vs.

State of West Bengal & Ors.

For the Petitioner:

**Mr. Sougata Mitra, Adv.,
Ms. Ankita Dey, Adv.,
Mr. Rameswar Sinha, Adv.**

For the State:

**Mr. Pinaki Dhole, Adv.,
Mr. Pinaki Bhattacharyya, Adv.**

Reserved on:

14.12.2022

Judgment on:

16.02.2023

ANIRUDDHA ROY, J.:

Facts:

1. The petitioner was initially appointed as an Assistant Teacher of Sitalpur Junior High School, District- Purulia on and from July 02, 1985. The employment of the petitioner was approved w.e.f. July 06, 1985 **Annexure P-1** to the writ petition. The petitioner then was appointed as the Teacher-in-charge of the relevant school with a maximum extension stipulation till March 03, 1987 **Annexure P-2** to the writ petition.

2. The petitioner then was appointed as the Headmaster of Sitalpur Junior High School, District- Purulia on and from November 13, 1991 and his service was as such approved on January 18, 1992 **Annexure P-3** to the writ petition. The petitioner then by and under Memo dated August 20, 1996 issued by the respondent no.4 appointed as the Headmaster of **Sitalpur High School**, District-Purulia and the said school was upgraded to Higher Secondary School and he was appointed as the Headmaster of **Sitalpur High School** and continued as such till his superannuation **Annexure P-4** to the writ petition.
3. Immediately prior to his superannuation the petitioner was convicted in Sessions Trial Case No. 109 of 1989 arising out of Sessions Case No. 15 of 1989, inter alia, under Section 147, 148, 149, 324, 325, 326, 302 and 307 of the Indian Penal Code by the Learned Additional Sessions Judge, First Court, Purulia on March 28, 2005 sentencing him to suffer imprisonment for life and pay a fine of Rs.10,000/- in default further one year of rigorous imprisonment. Consequently the petitioner was taken into jail custody on March 28, 2005.
4. Being aggrieved by the said order of conviction passed by the Jurisdictional Criminal Court the petitioner preferred a criminal appeal being CRA 2250 of 2005 before this Court in which an order was passed by the Appellate Court on May 16, 2005 granting suspension of sentence of the petitioner till disposal of such criminal appeal. As a consequence, the petitioner was enlarged on bail **Annexure P-5** to the writ petition.
5. The petitioner retired from his employment on attaining the age of superannuation w.e.f. March 31, 2017 prior to his retirement the relevant

school authorities submitted all the papers in relation to the payment of retiral benefit including pension and gratuity before the respondent no.4 on December 21, 2015 **Annexure P-6** to the writ petition.

6. The Deputy Director, Directorates of Accounts of School Education approached the respondent no.4 in writing dated May 20, 2016, **Annexure P-7** to the writ petition for releasing the pensionary benefit to the petitioner. The Deputy Director, Directorates of Accounts of School Education Department, Purulia further forwarded pension papers of the petitioner to the respondent no.4, **Annexure P-7** to the writ petition. Thereafter the Managing Committee of the relevant school authority submitted the pension file before the respondent no.4 by its memo dated June 06, 2016 for releasing the pensionary benefits to the petitioner. The Deputy Director, Directorates of Accounts of School Education Department, Purulia again forwarded the pension papers of the petitioner before the respondent no.4 under its memo dated July 21, 2016, to take further action to grant pensionary benefit to the petitioner **Annexure P-9** to the writ petition.
7. The school authority also made a representation dated July 25, 2016 before the respondent no.4 to release the terminal benefits regarding the pension of the petitioner **Annexure P-10** to the writ petition. The respondent no.4 then forwarded the pension file of the petitioner before the respondent no.6 on February 08. 2017 for taking necessary action to grant pensionary benefits to the petitioner, **Annexure P-11** to the writ petition. The relevant school

authority had also issued the necessary **No Liability Certificate** in favour of the petitioner **Annexure P-12** to the writ petition.

8. The petitioner then suddenly on February 08, 2017 received a memo issued by the respondent no.4 issued to the respondent no.6, the petitioner discovered that since he had suffered the custody and remained suspended between March 28, 2005 and May 20, 2005, though the petitioner was enlarged on bail on May 16, 2005. The benefits were withheld.
9. The petitioner then made a detailed representation dated September 08, 2020 before the respondent authorities **Annexure P-13** to the writ petition.

Submissions:

10. Mr. Sougata Mitra, Learned Counsel Appearing for the petitioner referring to the Government Order No. 88-SE(B) dated May 26, 1998 submitted that in relation to the scheme regarding the payment of pension and gratuity on the date of superannuation and introduction of comprehensive form in connection with sanctional pension to the employees of West Bengal recognized Non-Government Educational Institutions, the petitioner is eligible to receive all the retiral benefits including pension and gratuity **as on the date of his superannuation i.e. w.e.f. March 31, 2017.**
11. Learned counsel for the petitioner then submitted that, though the school authority had performed all its obligation in law and sent all materials to the respondent no.4 way back on June 06, 2016, the respondent no.4 failed and neglected to take any step and did not follow the said government order dated May 26, 1998 and did not pay any heed to the case of the petitioner.

12. The learned counsel for the petitioner submitted that on a perusal of the records of the criminal proceeding it would be evident that the petitioner had suffered suspension in view of the fact that the petitioner was taken into custody for more than 48 hours. **The charges allegedly labelled against the petitioner were no way related to the employment of the petitioner nor that the petitioner was alleged with any disciplinary proceeding initiated by his immediate employer.** The petitioner is eligible to receive his retiral benefits including the pension and gratuity since he had completed entire employment tenure with an unblemished carrier record for more than 30 years of his employment carrier.
13. The learned counsel submitted that challenging the said arbitrary, wrongful and illegal action and in action on the part of the respondent no.4 and/or the appropriate state authorities the petitioner filed this writ petition claiming release of his employment benefit earned by the petitioner during his service tenure. He submitted that, there is no restrictive service covenant which could restrict the petitioner from receiving his superannuation benefit including the pension gratuity after his retirement. The Learned Counsel relied upon **Clause 19(5)** of the West Bengal Recognized Non-Government Educational Institution employees (Death-cum-Retirement Benefit) Scheme, 1981 (for short, the DCRB Scheme, 1981) and submitted that this was the provision under which the petitioner became eligible to receive his pension which did not contemplate any embargo or any restriction upon the petitioner to receive his entire service

benefit after retirement. The learned counsel for the petitioner in support of his contention had relied upon the following decisions:-

- (i) ***A decision of a Coordinate Bench of this Court In the matter of: Gunamay Mahato vs. State of West Bengal & Ors., reported at 2015 SCC OnLine Cal 7503.***
- (ii) ***A decision dated September 16, 2016 of a Coordinate Bench of this Court In the matter of: Niranjan Mahato vs. State of West Bengal & Ors., WP 1897(w) of 2011.***
- (iii) ***A decision of a Coordinate Bench of this Court In the matter of: Anadi Prasad Mahato vs. State of West Bengal, reported at 2014(2) CHN (CAL) 103.***
- (iv) ***A decision dated July 09, 2015 of a Coordinate Bench of this Court In the matter of: Prafulla Chandra Mahato vs. The State of West Bengal & Ors., W.P. No. 9890(W) of 2015.***

14. Mr. Pinaki Dhole, learned advocate appeared for respondent no.1 to 6 referring to **Annexure P-11** at page 38 to the writ petition, which was a communication issued by the respondent no.4 to the respondent no.6 submitted that, in view of the petitioner being suspended for the period between March 28, 2005 and May 20, 2005 and was in jail custody arising out of a **judicial proceeding** the benefits could not be released and the petitioner could not have claimed the same. Referring to **Clause 19(5)** of the DCRB Rules, 1981. He submitted that since the petitioner suffered a **judicial proceeding**, the final pension, gratuity etc. Shall not be sanctioned to him and the pension authority had every power

to withhold the pension of the petitioner. The pension and other retiral benefits of the petitioner, thus, shall not be released and being withheld lawfully in terms of the relevant service conditions.

Decision:

15. After hearing the rival contentions for the appearing parties and upon perusal of materials on record, it appeared to this Court that, the relevant provision of the said DCRB Scheme, 1981 was required to be looked into. **Chapter V** of the **DCRB Scheme, 1981** dealt with the rate of pension, **Clause 19(5)** of the DCRB Scheme, 1981 is quoted below:-

*“**19(5)** Final pension, gratuity etc., shall not be sanctioned to an employee against whom department/**judicial proceedings** have been instituted/continued. In case of misconduct of the pensioner, the pension sanctioning authority has the power to withhold pension or reduce the pension.*

Where any department or judicial proceeding is instituted or where a departmental proceedings is continued against an employee who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying services up to the date of retirement, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed on suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.

Payment of this provisional pension shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

16. Showing the custody suffered by the petitioner, the initiation and pendency of the criminal proceeding, Mr. Pinaki Dhole Learned State Counsel submitted that, the expression used ***“judicial proceeding”*** in **Clause 19(5)** of the said DCRB Scheme, 1981 included the said criminal proceeding and the custody suffered by the petitioner. He submitted that, the term ***“judicial proceeding”*** used in the said **Clause 19(5)** included the criminal proceeding. The moment a judicial proceeding was initiated and pending against an employee, such employee under the said DCRB Scheme, 1981 would not be eligible to full pensions subsequent to such employee attaining the age of superannuation.
17. The decisions referred to by the learned counsel appearing on behalf of the petitioner were all in the same line and to the effect that the meaningful understanding of the expression ***“judicial proceeding”*** should be understood in the correct perspective and context of the entirety of the said DCRB Scheme, 1981. The scheme provided for payment of pension to employees guided therein subject to such employee fulfilling the eligible criteria. **The eligibility criteria required satisfactory performance in service and a qualifying period of service.** The unblemished carrier record of an employee is also to be considered at the time of superannuation of the employee, while disbursing retirement benefit. The unblemished carrier record of an employee naturally depends on the most important factor that the employee did not receive any stigma of whatsoever nature related with and connected to throughout his employment carrier.

18. On a close scrutiny of the materials before this Court it appeared the criminal proceeding that was initiated against the petitioner was not at all connected with his employment carrier nor it was initiated by his employer. Learned counsel for the State had also not been able to demonstrate before this Court that, the criminal proceeding that was initiated against the petitioner related to his employment. His principle objection was that in view of the expression **“judicial proceeding”** having been used in the said DCRB Scheme, 1981, the same prevented the petitioner to receive his retiral benefit.
19. **“Judicial proceeding”** contemplated in Clause 19.5 of the DCRB Scheme, 1981 has to be read in the context as discussed above. Any judicial proceeding against an employee would not disentitle such an employee governed under the said DCRB Scheme, 1981 to full pension. If the argument advanced by the learned State Counsel was to be accepted then any judicial proceeding be it civil or criminal in nature initiated or pending against an employee even by a third party other than the employee-employer relationship would make the employee, ineligible to receive his retiral benefit, such cannot be the proper understanding of or lawful meaning that can be ascribed to the expression **judicial proceeding** used in Clause 19(5) of the said DCRB Scheme, 1981.
20. A retiral benefit of an employee is the property of the employee, to receive the same is not only a legal but also a constitutional right. The right to receive retiral benefit by an employee is a vested right which cannot be taken away without due process of law. Thus, for any reason whatsoever not related to the employment of an employee, if a judicial proceeding is initiated, the same

definitely would be debar the employee to receive its retiral benefits. In the fact of this case the employer of the petitioner had not initiated the said criminal proceeding.

21. The expression ***“judicial proceeding”*** referred to in Clause 19.5 as quoted above, thus, should be construed, interpreted and understood in the context of a proceeding in relation to satisfactory completion of employment of an employee during his employment tenure. Further the expression used in the said Clause 19.5 ***“departmental/judicial proceedings”*** made the understanding of this Court explicit and clear. The expression departmental proceedings used in the said clause would necessarily mean proceeding against such employee in a matter relating to the discharge of his employment as an employee, the judicial proceedings referred to in the said clause would, therefore, conspicuously and in no uncertain terms shall mean a **Judicial Proceeding must have a nexus, connection and relation with the employment of the employee in course of his employment and not otherwise**. In the facts of this case, the criminal proceeding in which the petitioner was taken into custody had no nexus with his service. The State employer had not labelled any charge of pecuniary loss caused to the government by the petitioner during his employment. The employer had not initiated any disciplinary proceeding against the petitioner during his employment carrier.

22. In view of the foregoing discussions and reasons **this writ petition succeeds**.

The respondent employer will forthwith release the terminal benefits of the

petitioner arising out of his employment payable to him, positively within a period of six weeks from the date of communication of this order. The entire benefit shall be paid along with interest at the rate of 8 per cent per annum on the arrears from the date of the retirement of the petitioner on which the terminal benefit became due and payable till the date of actual payment.

23. In view of the above, this writ petition **W.P.A. 10911 of 2020** stands allowed, without any order as to costs.

(Aniruddha Roy, J.)