

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

**WPA 24916 of 2012
With
CAN 1 of 2014 (Old No. CAN 8568 of 2014)**

**Mrityunjay Ghosh
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Ekramul Bari
Mr. S. S. Mondal
Mr. Sk. Imtiaj Uddin

For the State : Mr. Anirban Sarkar

Heard on : 31.07.2024

Judgement on : 31.07.2024

PARTHA SARATHI SEN, J.:

1. In this petition the writ petitioner is aggrieved with the memo No. 182/M dated 10.05.2010 as issued by respondent No. 3/the District Inspector of Schools (S.E.), Howrah (hereinafter referred to as the 'D.I.' in short) who directed the writ petitioner to deposit the over-drawal amount on account of P.G. scale for the period of 26.07.1987 to 31.07.1989.

2. Admittedly, the writ petitioner has not deposited the alleged over-drawal amount and accordingly his pension was withheld though the writ petitioner retired on 30.11.2009 as headmaster of Kona High School, Howrah.

3. In the backdrop of the aforementioned factual position the petitioner approached before this Court with a prayer for issuance of writ of mandamus for rescinding and/or cancellation of the aforesaid memo dated 10.05.2010 with a further prayer for commanding the respondent No. 3, i.e.; the District Inspector of Schools (S.E.), Howrah to release his pension at the earliest.

4. At the very outset Mr. Bari, learned Advocate for the writ petitioner draws attention of this Court to page No. 40 of the writ petition whereby and whereunder the respondent No. 3/D.I. under cover of its memo dated 17.04.2009 had called for certain documents which includes copy of the sanctioned order for drawing P.G. scale with effect from 26.07.1987 along with some other documents. It is submitted by Mr. Bari that from page Nos. 26 and 27 of the instant writ petition it would reveal that the writ petitioner joined in his service on 04.11.1970 as an Assistant Teacher and at that material time his educational qualification was B.Sc. (Hons.).

5. It is further submitted that from page No. 41 of the writ petition it would reveal that the then headmaster of Bantra M.S. P.C. High School

duly replied to the memo dated 17.04.2009 to the respondent No. 5 stating inter alia that the present writ petitioner increased his qualification by passing M.Sc. examination in physics from Jadavpur University and his last date of M.Sc. examination was 25.07.1987. It was further informed by the headmaster of the said school that a resolution was adopted by the managing committee of the Bantra M.S. P.C. High School on 08.04.1988 approving P.G. scale to the writ petitioner from 26.07.1987 in accordance with the rule. By the said letter the then headmaster of the said school thus requested the said D.I. to release the pension since the writ petitioner would retire on 30.11.2009.

6. It is submitted by Mr. Bari that the said D.I. did not pay any to the request letter dated 15.07.2009 as wrote by the headmaster of Bantra M.S. P.C. High School and on the contrary by issuing the impugned memo No. 182/M dated 10.05.2010 asked the writ petitioner to deposit the entire over-drawal amount for the period of 26.07.1987 to 31.07.1989. Admittedly, such alleged over-drawal amount has not been deposited by the writ petitioner.

7. In support of his contention Mr. Bari places his reliance upon a special Bench judgment as passed in WPA 9921 of 2007 (Utpal Kanti Karan vs. State of West Bengal and Others) where the said special Bench of this Court express the following view:

“g) If a teacher has partially completed higher study before entering service he/she would come under purview of G.O. No. 1595-SE(S) dated 26th December, 2005 and the question of taking permission from DIS-SE concerned would not arise.”

8. It is submitted by Mr. Bari that though the writ petitioner is not covered by the aforesaid G.O. No. 1595-SE(S) dated 26.12.2005 even then the respondent No. 3/D.I. of School is not supposed to ask the writ petitioner to deposit the alleged over-drawal amount as a condition precedent for grant of pension in favour of the writ petitioner.

9. In course of his submission Mr. Bari, learned Advocate for the writ petitioner also places his reliance upon a reported decision Thomas Daniel vs. State of Kerala and Others reported in 2022 SCC OnLine SC 536. The relevant paragraph of the reported decision Thomas Daniel (Supra) is reproduced hereinbelow in verbatim:

“9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the

employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

10. In Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18] this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees. It was held thus:

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

11. In Col. B.J. Akkara (Retd.) v. Government of India [(2006) 11 SCC 709] this Court considered an identical question as under:

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 ; 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of Judicial discretion to relieve the employees from the hardship that will be caused if recovery is Implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had

knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”

10. It is thus submitted by Mr. Bari that the principle of law as enunciated by Hon’ble Apex Court in the reported decision of Thomas Daniel (Supra) squarely applies in the present writ petition inasmuch as no materials have been placed before this Court to substantiate that the alleged over-drawal and/or alleged drawal of Post graduate scale with effect from 26.07.1987 was the outcome of a misrepresentation or fraud on the part of the writ petitioner. It is submitted that from the materials as placed before this Court it would reveal that the managing committee of the Bantra M.S. P.C. High School by its resolution dated 08.04.1988 approved the P.G. scale to the petitioner with effect from 26.07.1987 and since then the present writ petitioner was drawing his P.G. scale with the knowledge and consent of the respondent No. 3 that is the D.I. of School. It is thus submitted that it is a fit case for allowing the instant writ petition.

11. Learned Advocate for the State, however, contends that in absence of any sanctioned order the writ petitioner is not supposed to draw the Post graduate scale with effect from 26.07.1987 and, therefore, the

respondent No. 3/D.I. is very much justified in issuing the memo dated 10.05.2010 by directing the petitioner to deposit the entire over-drawal amount.

12. On perusal of the entire materials as placed before this Court and after giving due consideration over the submissions of the learned Advocates for the contending parties it appears to this Court that it is undisputed that the present writ petitioner joined in his service with B.Sc. (Hons.) degree on 04.11.1970. It is equally undisputed that in the year 1987 he passed his M.Sc. examination in physics from Jadavpur University. Materials have been placed before this court by a resolution taken by the managing committee of the Bantra M.S. P.C. High School the writ petitioner was permitted to draw pre-post graduate scale with effect from 26.07.1987. Since 26.07.1987 the writ petitioner was drawing post graduate scale till his retirement and during such time no objection was raised by the D.I. of school.

13. At this juncture this Court proposes to look to the reported decision of Thomas Daniel as quoted supra. In the reported decision of Thomas Daniel (Supra) the Hon'ble Apex Court has occasioned to consider as to whether an employer is entitled to recover from his employee the excess payment on account of increments on the ground that the said increments were granted on account of an error. The Hon'ble Apex Court in the said reported decision noticed that in the

event the said excess payment was not made on account of any misrepresentation or fraud on the part of the employee or such payment was made by the employer by applying wrong principle of calculation which is subsequently found to be erroneous the employer is not entitled to recover the said excess amount from the employee. The Hon'ble Apex Court while deciding the case of Thomas Daniel considered the situations of hardship which would govern the employees on the issue of recovery and thus held the following:

“13.18. 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, summaries 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."

14. Keeping in mind the proposition of law as discussed supra if I look to the materials as placed before this Court it reveals that during his service the present writ petitioner increased his qualification by obtaining M.Sc. in physics which is his subject in the school and the managing committee of the said school by its resolution dated 08.04.1988 approved in the P.G. scale and the respondent No. 3/D.I. of School practically permitted to withdraw the said post graduate scale till his retirement by releasing the alleged excess amount.

15. No materials have been placed before this Court that either the M.Sc. degree of the writ petitioner is fake or the writ petitioner by way of misrepresentation or fraud persuaded the managing committee of the school to release the post graduate scale.

16. It is pertinent to mention herein that no objection has been raised by the D.I. of School with regard to the grant of post graduate scale while the writ petitioner was in service and this Court has noticed that such objection was raised vide memo dated 10.05.2010 when the

pension paper was sent to the D.I. of School immediately prior to the retirement of the writ petitioner.

17. This Court thus considers that in view of the proposition of law as discussed in the reported decision of Thomas Daniel (Supra) and in view of absence of any misrepresentation or fraud on the part of the writ petitioner the D.I. of School cannot be permitted to raise the issue of over-drawal while processing the pension paper of the writ petitioner.

18. The impugned memo No. 182/M dated 10.05.2010 issued by the respondent No. 3/the D.I. of Schools (S.E.), Howrah is thus hereby quashed.

19. Accordingly, the instant writ petition along with all interim applications is allowed.

20. The respondent No. 3, i.e.; the District Inspector of Schools (S.E.), Howrah is, therefore, directed to release the pension of the writ petitioner without insisting the writ petitioner to deposit the alleged over-drawal of P.G. scale for the period of 26.07.1987 to 31.07.1989.

21. It is further ordered that the current pension of the writ petitioner shall have to be disbursed in favour of the writ petitioner within three months from the date of communication of this order keeping in mind the last drawn pay of the writ petitioner. The arrears of pension, if there be any, shall have also to be disbursed by the respondent No. 3 in

favour of the writ petitioner within six months from the date of communication for this order.

22. Before parting with, liberty is given to the writ petitioner to apply before the respondent No. 4, the Director of Pension, Provident Fund and Group Insurance, West Bengal, Purta Bhavan, Salt Lake City, Calcutta – 700091 to claim interest if he is at all entitled on the pension and in the event such claim is made the respondent No. 4 is directed to take appropriate decision in accordance with law within three months of making such prayer.

23. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)