09.01.2024
Item No.82
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WPA/2494/2023
ANANDA MOHAN ROY SARKAR
VS
STATE OF WEST BENGAL & ORS.

Mr. Ekramul Bari
..for the petitioner.

Mr. Subir Kumar Saha,
Mr. Bedashruti Bose
..for the State.

The petitioner has prayed for a direction upon the respondent authorities to issue the pension payment order and to disburse the pension, gratuity and other admissible benefits to the petitioner in terms of the last drawn pay.

It appears from the record that the petitioner had undertaken the M.Sc. course under North Bengal University before joining the post as an Assistant Teacher in the Science Group. The examination was conducted later for which the petitioner had been given study leave with full pay. The Post Graduate scale of pay was sanctioned by the District Inspector of Schools (SE), Cooch Behar by a Memo dated 25th January, 1994 with effect from 9.1.1990.

It appears from the Memo dated 24th July, 2023 that the District Inspector of Schools (SE), Cooch Behar observed that sanction of Post

Graduate scale of pay accorded by the then DI in favour of the petitioner was justified.

Mr. Bari, learned advocate appearing for the petitioner submits that the Director of Pension, Provcident Fund and Group Insurance, West Bengal has not taken any steps for issuance of the pension payment order in spite of the fact that the concerned DI recommended for issuance of such pension payment order in favour of the petitioner.

Mr. Saha, the learned Additional Government Pleader submits that there has been an overdrawal by the petitioner for which the pension payment order has not been issued.

This court finds that a Coordinate Bench in the order dated 22.11.2023 has held as follows:

> "Under such circumstances, *prima facie* it does not appear to this Court that there is any reason for withholding the pensionary benefit of the petitioner on the ground of overdrawal of pay. The scale was granted on and from 1990 and the petitioner enjoyed such scale till 2023. The school authorities and the District Inspector of Schools are satisfied that the petitioner had completed the curriculum before he joined the school and only the examination was held later, i.e., after his joining, for which he was allowed study leave.
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> Under such circumstances, at the fag end of the career of the petitioner, when the petitioner was found to be eligible for award of higher scale of pay and the District Inspector of Schools (SE) upon enquiry had also found that the petitioner was entitled in higher scale of pay available to a degree of Msc. In Mathematics, there cannot be any reason to withhold the pension on the ground of

> ovrerdrawl. The petitioner is not responsible for such pay fixation. The authorities and the employer had fixed the pay on being satisfied as to the entitlement of the petitioner. It has been also clarified that the petitioner was not attending the course during his tenure as a teacher. He had only taken leave for a few days to sit at the examination which was permitted by the authority."

The pay scale of the petitioner had been fixed by the authorities and the employer and the petitioner is not responsible for the same.

It is well settled that recovery of alleged overdrawal at the fag end of the career is not permissible.

In view thereof, this court is of the considered view that the respondent authorities cannot be permitted to recover the alleged overdrawal from the petitioner.

The Director of Pension, Provident Fund and Group Insurance, West Bengal, being the 4th respondent and the Director of Pension, Provident Fund and Group Insurance, Uttar Kanya, being the 6th respondent, is directed to issue the Pension Payment Order at the earliest and positively within a period of six weeks from the date of receipt of the server copy of this order along with a copy of the Memo dated 24th July, 2023 and 6th July, 2023 which are annexed at pages 30 and 31 of the writ petition on the basis of the last pay drawn by the petitioner. Upon issuance of the pension payment order, the concerned authority shall release the pension, gratuity and other admissible benefits to the petitioner in terms of the pension payment order within a period of six weeks from the date of issuance of Pension Payment Order.

With the above observations and directions, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)