30.07.2025
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Ct.No.7
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WPA No. 15426 of 2024

Krishna Bandyopadhyay
Vs.
State of West Bengal & Ors.

Mr. Sakti Pada Jana
Mrs. Sudipa Pramanik
....for the petitioner

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
..... for the State

The petitioner, a retired Headmistress, has preferred the present writ petition, praying for an appropriate order and/or direction and/or a writ, particularly in the nature of mandamus, commanding the concerned respondents to refund a sum of Rs. 5,90,541/– along with interest thereon at the rate of 10% per annum, calculated from the date of its deposition through treasury challan until the date of actual repayment.

Furthermore, the petitioner prays for a direction upon the respondents to forthwith release her pension, to be computed on the basis of her last drawn basic pay amounting to Rs. 1,10,700/– per month.

Before addressing the issue raised in the present writ petition, it would be prudent to advert to the essential facts that led to its institution.

The petitioner commenced her career as an Assistant Teacher at Kenjakura Damodar Balika Vidyalaya, District – Bankura, on 21.09.1988. Thereafter, she was appointed as the Assistant Headmistress of the said institution on 12.11.2002. Subsequently, she assumed charge as the Headmistress of Dhulai Girls' High School, District – Bankura, with effect from 01.10.2008. Upon completion of approximately 25 years of continuous and unblemished service, the petitioner retired from service on 31.07.2022, having attained the age of superannuation.

Prior to her retirement, all requisite documents were duly forwarded to the competent authority for the purpose of processing and releasing the petitioner's pension and other retiral benefits. However, the disbursement of her pension and terminal dues was withheld on the ground that she had allegedly drawn excess pay during her tenure of service. Consequently, the petitioner was directed to deposit a sum of Rs. 5,90,541/–, alleged to be the overdrawn amount, as a precondition for the release of her pension and other retirement benefits.

Confronted with such a situation, the petitioner was left with no alternative but to deposit the sum of Rs. 5,90,541/– through treasury challan. Thereafter, her basic pay was revised, and the competent authority ultimately concluded that, although the petitioner had been drawing a basic pay of Rs. 1,10,700/–, her actual entitled basic pay was Rs.1,04,400/–. Based on this revised figure, her pension was accordingly assessed and subsequently released in her favour. These developments have compelled the petitioner to approach this Hon'ble Court by filing the present writ petition.

Mr. Jana, learned Advocate appearing on behalf of the petitioner, draws my attention to the petitioner's pay-statement and submits that the petitioner was promoted to the post of Assistant Headmistress on 12.11.2002. At the relevant point of time, in accordance with the applicable Government Order, being G.O. No. 185-SE(B) dated 04.05.2000, an additional increment of Rs. 2,50/– was added to her basic pay. He submits that this benefit was duly extended to the petitioner under the provisions of ROPA 1998, pursuant to which her pay was revised. Taking into account all relevant factors, the concerned District Inspector of Schools subsequently fixed the petitioner's basic pay and issued the Pay Certificate.

He further submits that, on 01.10.2008, the petitioner was promoted to the post of Headmistress and, as per the rules then prevailing, was granted an additional increment. Giving retrospective effect to the Circular dated 08.10.2009, he claims, the concerned respondents concluded that the petitioner had unlawfully enjoyed double benefits — Grade Pay due to her promotion as Assistant Headmistress, and an additional increment granted upon promotion to Headmistress. This erroneous conclusion led the respondents to wrongly determine that the petitioner had drawn excess payment, thereby compelling her to deposit a sum of money to obtain her pension and other retiral benefits.

Citing the decision reported in *(2015) 4 SCC 334* (State of Punjab & Others vs. Rafiq Masih (White Washer) & Others) and another unreported decision of the Hon'ble Division Bench of this Court in *MAT 1002 of 2022* (The State of West Bengal & Anr. vs. Sri Kali Sadhan Bhattacharjee @ Bhattacharyya & Ors.), Mr. Jana submits that no amount alleged to have been overdrawn by an employee due to erroneous fixation of pay can be recovered after the cessation of the master-servant relationship. Accordingly, he prays for an appropriate direction commanding the concerned respondents to refund the amount deposited by the petitioner through treasury challan and to revise and release the petitioner's pension on the basis of her last drawn basic pay of Rs.1,10,700/–.

In rebuttal, Mr. Chattopadhyay, learned Advocate appearing for the State, vehemently opposes the submissions advanced by Mr. Jana, learned Advocate for the petitioner. He submits that the benefit extended to the petitioner in her capacity as Assistant Headmistress of the said school could not be extended to her upon her subsequent appointment as

Headmistress of another school. He further contends that there was initially some confusion regarding whether an individual could simultaneously avail of double benefits—one for holding the post of Assistant Headmistress and another for the post of Headmistress of a school. However, this confusion was conclusively resolved by the School Education Department, Budget Branch, through its Memorandum dated 06.05.2003, which was issued to clarify the provisions contained in the earlier Memorandum vide G.O. No. 185-SE(B) dated 04.05.2000.

Inviting my attention to the relevant portion of the Circular dated 06.05.2003, he further submits that when an individual is promoted from the post of Assistant Headmaster or Assistant Headmistress to that of Headmaster or Headmistress, his/her pay scale shall be refixed excluding the additional increment previously drawn as Assistant Headmaster or Assistant Headmistress.

Therefore, according to Mr. Chattopadhyay, the concerned respondents were justified in directing the petitioner to deposit the amount which she had drawn in excess during her tenure as Headmistress. He submits that upon deposition of the said overdrawn amount, her pension and other retiral benefits were released in accordance with her rightful entitlement. The circular, as produced by Mr. Chattopadhyay is taken on record.

In reply, Mr. Jana draws my attention once again to the petitioner's pay statement and contends that on 01.10.2008, the petitioner's pay was revised, whereby the benefit previously enjoyed in her capacity as Assistant Headmistress was withdrawn.

Mr. Jana, learned Advocate, further submits that the school in which the petitioner joined as Headmistress was subsequently upgraded and the petitioner has not been given any additional benefit for the same.

Heard the learned Advocates representing the respective parties and perused the materials on record.

There is no dispute that the petitioner was appointed as Assistant Headmistress on 12.11.2002, and in terms of the Circular vide G.O. No. 185-SE(B) dated 04.05.2000, a Grade Pay of Rs. 250/- was added to her basic pay. As noted earlier, the petitioner subsequently joined as Headmistress in another school on 01.10.2008. In accordance with the applicable rules, she was granted an additional increment of 3% on her basic pay upon such promotion.

For the better appreciation of the controversy central to the present writ petition, it would be appropriate to reproduce the relevant portion of the Circular dated 06.05.2003, which reads as follows:

> "*If any Assistant Headmaster/Assistant Headmistress of a High School or Assistant Headmaster/Assistant Headmistress of a High*

Madrasah with High School Course who has been drawing one additional increment in terms of Para 3(iii) and Para 3(iv) of the above Government Order is subsequently appointed Headmaster/Headmistress of a Higher Secondary School/ High Madrasah with Higher Secondary Course, his/her pay will be fixed excluding the additional increment which he/she was drawing as Asstt. Headmaster/Asstt. Headmistress of High School/High Madrasah with High School Course. His/Her pay in the pay scale of Headmaster/Headmistress of a Higher Secondary School /High Marasah with Higher Secondary Course will be fixed in the manner as stipulated in para 6 of the above Government Order. After such fixation he/she will be entitled to draw two additional increments in terms of Para 3(i) of the above Government order from the date of joining his/her new assignment. His/her next increment will fall due after completion of one full year from the date of joining his/her new assignment."

By the Circular dated 06.05.2003, the School Education Department, Budget Branch, clarified its stand that in cases where an Assistant Headmaster or Assistant Headmistress is subsequently appointed as Headmaster or Headmistress of a Higher Secondary School or Higher Madrasah, his or her pay is to be refixed excluding the additional increment previously drawn in the capacity of Assistant Headmaster or Assistant Headmistress. The intention of the School Education Department, therefore, is clear that an individual promoted from the post of Assistant Headmaster or Assistant Headmistress to that of Headmaster or Headmistress is not entitled to enjoy both benefits simultaneously. The stand taken by the

State in respect of High Schools is consistent with this interpretation.

Needless to state, the Circular dated 06.05.2003 was published in the Official Gazette prior to the petitioner's appointment to the post of Headmistress. Accordingly, the said Circular is reasonably applicable to the petitioner's case. As such, the concerned respondents cannot be said to have misdirected themselves in concluding that the petitioner had erroneously availed double benefits. However, the respondents sought recovery of the said amount after the cessation of the master-servant relationship between the petitioner and the authorities, which raises a separate legal issue.

Therefore, applying the principles laid down in the decisions of *Rafiq Masih* (supra) and *Kali Sadhan Bhattacharjee @ Bhattacharyya* (supra), it is evident that the respondents were not legally justified in compelling the petitioner to deposit the said amount as a pre-condition for the release of her pension and retiral benefits. Accordingly, in view of the legal proposition enunciated in the aforesaid judgments, it must be held that the concerned authority erred in directing the petitioner to deposit the alleged overdrawn amount of Rs. 5,90,541/–.

Mr. Jana contends that the benefit earlier extended to the petitioner upon her promotion to the post of Assistant Headmistress was subsequently withdrawn. In support of this contention, he refers to the petitioner's pay statement (Serial No. 33, page 54 of the writ petition), which indicates that the petitioner was drawing an unrevised basic pay of Rs. 10,750, an amount that is Rs. 150 less than her previously drawn basic pay of Rs. 10,900. This, according to Mr. Jana, clearly reflects that the earlier benefit was not continued.

However, another pay statement reflects that as on 01.10.2008, the petitioner's revised basic pay was Rs. 26,860, whereas the competent authority later concluded that she was actually entitled to a revised basic pay of Rs.25,740. Although the data incorporated in her pay statement (Serial No. 33, page 54 of the writ petition) suggests that the petitioner was drawing Rs. 150 less in basic pay compared to her previous pay, it remains unclear whether the benefit of the Grade Pay of Rs. 250, earlier granted to her as Assistant Headmistress, was in fact withdrawn. Although the reason for the reduction of Rs.150 has not been explained, this lesser payment of Rs.150 cannot justify the conclusion that the benefit extended to the petitioner upon her promotion to the post of Assistant Headmistress was withdrawn.

In light of the discussions and the reasons detailed in the preceding paragraphs, the respondents are hereby directed to refund the amount of Rs. 5,90,541/- to the petitioner, together with interest thereon at the rate of 8% per annum, calculated from the date of its deposit until the date of actual payment.

However, since it has been held that the petitioner was not entitled to the benefit of Grade Pay as Assistant Headmistress and an additional increment as Headmistress, I am inclined to hold that the re-fixation of the petitioner's last drawn basic pay to Rs. 1,04,400/- was justified. Accordingly, the petitioner's pension shall be released based on this revised basic pay. While the respondents cannot be permitted to recover any alleged overdrawn amount following the cessation of the master-servant relationship, they are not obliged to continue to pay pension calculated on the basis of the erroneously fixed last drawn pay of Rs. 1,10,700/- previously granted to the petitioner.

With these observations and order, the writ petition is, thus, disposed of.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)