10 24.06.2025

Ct. No. 07

Ab

IN THE HIGH CoURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE.

WPA 16071 of 2024
IA No. CAN 1 of 2025

Indrajit Chattopadhyay
Vs.
State of West Bengal and others.

Mr. Subhrangsu Panda,
Ms. Haritri Roy,
Mr. Ratul Ghosal,
Mr. Rohit Adhikary.
... for the petitioner.

Mr. Md. Nure Zaman.
... for the State.

1. A retired Assistant Teacher of a secondary school knocked at the door of this Court, primarily seeking a writ of Mandamus commanding the respondents to release his retirement benefits.
2. Before addressing the issues raised in this writ petition, it would be appropriate to refer to the essential facts that led to its institution.
3. The petitioner joined Jadavpur Bejoygarh Shikshaniketan (hereinafter referred to as the school) on 11th October, 2001 as an untrained candidate. As per the applicable rules, he was required to complete his B.Ed. course from an institute recognized by the NCTE, either through regular mode or open and distance education mode, within five years from the date of his appointment.
4. Admittedly, the petitioner could not obtain the required training from any such institute within the stipulated

period of five years, and consequently, the payment of his yearly increment was stopped. However, as per the applicable Rule, an untrained teacher of a recognized secondary school with ten years of teaching experience shall be treated as a trained teacher for the purpose of drawal of yearly increment.

5. Accordingly, after completion of ten years of service, payment of yearly increment was resumed. The petitioner retired from service on attaining the age of superannuation on 31st January, 2024. However, his retirement benefits have not been released in his favour, prompting him to file the present writ petition.

6. Record reveals that, by an interim order dated 27th June, 2024, a Co-ordinate Bench of this Court directed the respondent authorities to release the admissible dues, including pension, upon compliance of the necessary formalities within the time specified therein with an observation that the alleged excess amount drawn, if calculated for refund, was to be adjusted and recovered from the petitioner without prejudice to the rights and contentions of the parties.

7. Challenging the said interim order, the petitioner preferred an intra-court appeal being FMA 1070 of 2024, which was dismissed by an order dated 23rd September, 2024. However, the Hon'ble Division Bench observed that any observation made in the order dated 27th June, 2024, whether incidentally or inadvertently touching upon the merits of the case, shall not have any persuasive effect at

the time of deciding the writ petition on merits. Accordingly, all points were kept open to be decided at the time of final hearing of the writ petition.

8. In compliance with the interim order passed in this writ petition, one Pension Payment Order was issued in favour of the petitioner. However, an amount of Rs. 13,56,529/- was deducted from the petitioner's retirement benefits. The petitioner, by filing an application being CAN 1 of 2025, has brought the Pension Payment Order on record.

9. Mr. Subhrangsu Panda, learned advocate appearing for the petitioner, submits that after retirement, there can no longer exist a master-servant relationship between the petitioner and the respondent. Therefore, the respondent cannot take the liberty to deduct any amount from the petitioner's retirement benefits. In support of his contention, he places reliance on three decisions reported in *AIR 2015 SC 696 (State of Punjab and others etc. vs. Rafiq Masih (White Washer)* etc., and an unreported decision of a Hon'ble Division Bench of this Court in *MAT 2176 of 2023 (The State of West Bengal & Ors. vs. Samar Chattopadhyay and Ors.)* and also an unreported judgment of the Hon'ble Supreme Court in SLP(C) No(s). 5918/2024 *(Jogeswar Sahoo & Ors. vs. The District Judge, Cuttack & Ors.)*. He accordingly submits that a direction be issued upon the respondents to release the amount deducted on the ground that the petitioner allegedly received excess payment during his service tenure.

10. Mr. Md. Nure Zaman, learned Advocate representing the State, opposes the contention advanced by Mr. Panda.
11. Heard the learned Advocates appearing for the respective parties and peruse the materials on record.
12. Admittedly, the petitioner joined the school as an untrained Assistant Teacher and could not obtain the B.Ed. degree within the stipulated five-year period and payment of his yearly increment was resumed after completion of 10 years of service. After rendering unblemished service for a period of 23 years, he retired from service on 31st January, 2024 upon attaining the age of superannuation.
13. To shed light on the issue, it would be appropriate to quote the relevant portion of the Memorandum vide No. 181-SE(B)/5B-1/09 dated 8th October 2009, which is as follows:

> "(d) Untrained Secondary School Teachers shall be allowed annual increments in revised pay structure on condition that such untrained teachers will have to get themselves trained from any institute recognized by N.C.T.E. in regular or open and distant education mode within 5 years from the date of appointment. An untrained teacher of a recognized Secondary School with ten years teaching experience in recognized school shall be treated as a 'trained' teacher for the p[purpose of drawal of increments only (but not for applying to the post of Headmaster as a trained teacher) in the

pay structure applicable to the teacher concerned after completion of one year from the date on which the condition of teaching experience is fulfilled."

14. Perusal of the relevant portion of the Memorandum dated 8th October, 2009 indicates that an untrained secondary school teacher shall be allowed annual increments in the revised pay structure on the condition that such untrained teacher obtains training from an institute recognized by the NCTE, either through regular or open and distance education mode, within five years from the date of appointment. An untrained teacher with ten years of teaching experience in a recognized school shall be treated as a trained teacher for the purpose of drawal of increments only.
15. The petitioner enjoyed annual increments for the first five years of his service on the understanding that he would obtain training from a recognized institution, but he was unable to do so. Nevertheless, upon completion of ten years of service, the payment of yearly increments was resumed, and he has accordingly enjoyed those increments.
16. The respondent, being his employer, never made any attempt to adjust the overdrawn amount during the petitioner's service tenure. The issue whether an employer can recover excess amount from the retirement benefits of an employee after his retirement was issued before the Hon'ble Division Bench in FMA 1070 of 2024.

17. The Hon'ble Division Bench observed that '*the Single Bench was conscious about the aforesaid proposition of law and invited the respondent authorities to disclose their stand, obviously to find out whether the case comes within the ambit of those situations/eventualities, which renders the deduction from retiral benefits impermissible*'.
18. In the decision of Rafiq Masih (White Washer) (supra), the Hon'ble Supreme Court ruled as follows:

> "12, 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from the retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from 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 recovery."

19. Thus, the amount claimed to have been overdrawn during the service tenure, which was not adjusted at that time, cannot be recovered by the employer after the cessation of the master-servant relationship. The same view has been reiterated by a Hon'ble Division Bench of this Court in the judgment of *Samar Chattopadhyay and Ors.* (supra).

20. Therefore, taking note of the facts and circumstances of this case and applying the legal principles laid down in the judgments referred to in the preceding paragraphs, I am of the considered view that respondent nos. 3 and 5 could not deduct any excess amount from any person after his retirement and as such they can be directed to release the amount of Rs. 13,56,529/-, which has been deducted from the retirement benefits of the present petitioner.

21. It is ordered accordingly.

22. The respondents are directed to make payment of the aforesaid amount being Rs. 13,56,529/- within twelve weeks from the date of communication of this order. The respondents shall continue to make payment of the current monthly pension based on the last drawn basic pay and other admissible dues.

23. With these observations, the writ petition and the connected application being CAN 1 of 2025 is disposed of.

(Partha Sarathi Chatterjee, J.)