

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14101 of 2024

Alik Kumar Biswas

v.

The State of West Bengal & Ors.

Mr. Sakti Pada Jana

Mr. Subhajyoti Das

Ms. Sudipta Pramanik

... For the petitioner

Mr. Nayan Chand Bihani, Sr. Advocate

Mr. Debabrata Mondal

... For the State

1. The petitioner is a retired school teacher who retired from service on attaining his normal age of superannuation on 30th April, 2013. Prior to his retirement, the respondent authority found discrepancy in the payment made to him and directed the petitioner to refund certain amount which was received by him in excess of his entitlement.

2. Challenging the direction to refund, the petitioner filed a writ petition before this Court being WP No. 2524 (W) of 2013. In compliance of the order passed by the Court on 17th April, 2013 in the aforesaid matter, a hearing was conducted by the District Inspector of Schools (Secondary Education), Nadia in presence of the Headmaster and the petitioner.

3. After hearing all the parties, the District Inspector of Schools observed that the prayer of the

petitioner for grant of post graduate scale of pay on and from a particular date cannot be allowed. The District Inspector of Schools directed the school authority to review the pay fixation of the petitioner and the petitioner was directed to refund the overdrawn amount in the treasury. The petitioner, accordingly, refunded the excess payment of Rs.2,25,453/- by way of two treasury challans dated 27th January, 2015 and 25th February, 2015. The petitioner in the instant writ petition prays for refund of the aforesaid amount.

4. It has been contended that the petitioner was no way responsible for the wrong fixation of pay and the respondent authority could not have directed the petitioner to refund the excess amount immediately prior to his retirement.

5. It has been submitted that the petitioner had also refunded the Government share of Provident Fund in the treasury to join the pension scheme in terms of the notification issued by the State Government.

6. Learned senior advocate representing the State respondents raises issue of delay in filing the writ petition. It has been submitted that the petitioner retired from service on 30th April, 2013 and the instant writ petition has been filed in May, 2024. There is no mention with regard to the delay in approaching the Court.

7. In reply to the issue of delay that has been raised by the State respondents, learned advocate for the petitioner relies on the order passed by this Court on **27th February, 2019** in **WP 7691 (W) of 2018 (Bina Ghosh Sarkar v. State of west Bengal & Ors.)**, the order dated **9th January, 2014** passed by the Hon'ble Division Bench of this Court in **MAT 1829 of 2013** with **CAN 12040 of 2013 (Smt. Jaya Ghosh v. The State of West Bengal & Ors.)** and the judgment passed by the Court on **18th January, 2017** in **WP 29979 (W) of 2016 (Shiba Rani Maity v. The State of West Bengal)** with **WP 27562 (W) of 2016 (Biswanath Ghosh v. The State of West Bengal)** wherein the Court was pleased to allow the writ petition despite there being delay.

8. I have considered the submissions made on behalf of both the parties.

9. In Shiba Rani Maity (supra) and Bina Ghosh Sarkar (supra), the Court took note of the judgment passed by the Hon'ble Supreme Court in the matter of **Union of India & Anr. v. Tarsem Singh** reported in **(2008) 3 SCC 648**. The Court also took note of the fact of the judgment passed by the Hon'ble Supreme Court in the matter of **State of Punjab & Ors. V. Rafiq Masih (White Washer) & Ors.** reported in **(2015) 4 SCC 334**.

10. In Rafiq Masih (supra), the Hon'ble Supreme Court laid down the situations where recovery is impermissible. The Court clearly laid down that

recovery from the employees due to retirement within one year from the order of recovery is impermissible. In *Tarsem Singh (supra)*, the Court adjudicated the issue of delay on the part of the litigant in approaching the Court.

11. In the instant case, the petitioner retired from service on 30th April, 2013 and his prayer for re-fixation of the scale of pay was made prior thereto. The petitioner approached the Court in the year 2013 when order was passed directing the authority to consider the grievance of the petitioner. Prior to his retirement a decision was taken by the authority regretting the petitioner's prayer for higher scale of pay on and from 8th October, 1982. The said decision was taken in compliance of the direction passed by the Court.

12. The petitioner willingly accepted the said decision and refunded the amount which was found to be drawn by him in excess of his entitlement. The instant writ petition has been filed on 15th May, 2024 with a prayer to direct the authority to refund the said amount.

13. In the meantime, the issue as to whether teachers would be entitled to switch over from the CPF scheme to the GPF scheme and receive pension on refund of the employer's share of contribution was finally adjudicated by the Court and answered in the affirmative.

14. The petitioner, in terms of the direction passed by the Court and in line with the State Government notification, refunded the employer's share of contribution of provident fund along with interest and thereafter pension was paid to the petitioner.

15. Here, the petitioner has strenuously tried to portray that as the petitioner refunded the employer's share along with interest, accordingly, the authority ought to refund the amount which was paid to the petitioner in excess.

16. Fact remains that, had the petitioner not refunded the employer's share, he would not have been eligible for receiving his pension because the petitioner initially did not opt for the pension scheme.

17. The issue of fixation of scale of pay and the fact of refund of the employer's share of contribution are completely two different matters. Refund was made by the petitioner on two different heads for diverse reasons; one was for refunding the excess amount drawn and the other was refunding the employer's share of provident fund. Entitlement of the petitioner to receive his pension arose only after he refunded the contributor's share in September, 2014.

18. The order of the District Inspector of School dated 26th April, 2013 directing refund was never challenged by the petitioner before any forum; on the contrary, the said direction was accepted and acted upon by the petitioner. It is for the first time by filing

the instant writ petition in May, 2024 that the prayer for refund of the overdrawn amount has been made.

19. Tarsem Singh (supra) has been relied upon to get over the issue of delay in approaching the Court. Argument has been made that as the money of the petitioner was wrongly enjoyed by the authority, accordingly, delay ought not to be a deciding factor in the instant case.

20. In Tarsem Singh (supra) the Hon'ble Supreme Court *inter alia* held that the delay of sixteen years would affect the consequential claim for arrears and the High Court was not justified in directing payment of arrears for the said period and, that too, with interest. The Hon'ble Supreme Court further held that the High Court ought to have restricted the relief relating to arrears to only three years before the date of the writ petition, or from the date of demand to the date of writ petition, whichever is earlier. It ought not to have granted interest on arrears in such circumstances. The Court was pleased to set aside the direction passed by the Division Bench of the High Court.

21. In the instant case, the petitioner has approached the Court after more than ten years of rejection of his prayer for refunding the withdrawn amount. There is not a word mentioned in the entire writ petition mentioning about, far less explaining, the delay in approaching the Court after so many years. On

the other hand, a picture has been tried to be portrayed that as the petitioner refunded the amount in line with the Government Order passed in the year 2014, it was improper for the authority to direct further refund of the overdrawn amount.

22. The Court is not inclined to accept the submission of the petitioner. The Court is of the considered opinion that, as the petitioner was directed to refund the overdrawn amount way back in April 2013, which the petitioner admitted without raising any grievance and acted in accordance with the same, accordingly, the prayer seeking refund of the amount deposited by him by approaching the Court after more than ten years of the said order, cannot be allowed.

23. As a result, the writ petition fails and is accordingly dismissed. No costs.

24. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

25. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Amrita Sinha, J.)