

Dulal Chandra Barman Vs State Of West Bengal & Ors

Court: Calcutta High Court

Date of Decision: Aug. 30, 2019

Hon'ble Judges: Md. Nizamuddin, J

Bench: Single Bench

Advocate: Tapas Kumar Sinha, Anupam Das, Kanailal Samanta

Final Decision: Disposed Of

Judgement

Md. Nizamuddin, J

Heard learned Advocates appearing for the petitioner and the school authority/respondent nos. 5 and 6. No one appeared on behalf of the State

Respondents even after service of notice and neither they have filed any affidavit-in-opposition though direction for filing the affidavit was passed by

this Court on 12th February, 2013 Respondent nos. 5 and 6 have filed the affidavit-in-opposition and reply has been filed against the same.

This Writ Petition has been filed challenging the impugned order dated 28th August, 2012 passed by the District Inspector of Schools (S.E), Purba

Medinipur/respondent no. 3.

Relevant Facts involved in brief is hereunder.

The case of the petitioner is that he was appointed as an Assistant Teacher in the Bengali language group in Krishnapur Adarsha Vidyamandir

(Higher Secondary School) on 16th July, 1990 and his service was approved by the Additional District Inspector of Schools (S.E) North 24 Parganas

for two years on 13th November 1990 and further approved his service from 16th July, 1992 and he rendered service in the said school till 31st

August, 1995.

Petitioner was selected and appointed in the post of Assistant Teacher of Bengali Language Group of Mahisahadal Raj High School by an order of

appointment dated 21st July, 1995 and joined the said school as Assistant Teacher of Bengali Language Group on 1st September, 1995 after submitting

release order from the previous school. The petitioner submitted his Service Book, last pay Certificate and other relevant papers to the authority of

Mahishadal Raj High School and on the basis of last pay certificate of the petitioner fixation of pay was approved by the District Inspector of Schools

(S.E), Purba Medinipur with effect from 1st September, 1995 by an order dated 26th December, 1995. The pay bills of the petitioner was on the basis

of his last pay Certificate by taking into account his service in previous school as continuous service and District Inspector of Schools (S.E), Purba

Medinipur approved the said pay bills of the petitioner every month.

The petitioner was given benefit of 10 years and 20 years continuous service in the post of Assistant Teacher from 16th July, 1990 as per ROPA 2008

upto June, 2011. The total amount drawn by the petitioner in the month of June, 2011 was Rs. 39,076/- only which includes Basic Pay of Rs.25,850/- +

D.A. Rs. 9,048/- + House Rent + Medical Allowance of Rs. 300/-. It is the case of the petitioner that he was entitled to Basic Pay of Rs. 26,630/- +

D.A. Rs. 9,320/- + House Rent Rs. 3,996/- + Medical Allowance Rs. 300/- only for the month of July, 2011 and the total amount of Rs. 40,246/- only

but the petitioner was not given the annual normal increment benefit amounting to Rs. 1,070/- only in the month of July, 2011 in the requisition list

prepared by the school authority i.e. Mahishadal Raj High School. The petitioner made a representation to the respondent nos. 5 and 6 on July 16,

2011 stating the said facts and requested the respondent nos. 5 and 6 to rectify the said omission. The petitioner filed a writ application being W.P.

No. 15153 (W) of 2011. The Hon'ble Justice Jyotirmay Bhattacharya (His Lordship then was) was pleased to dispose of the W.P. No. 15153

(W) of 2011 by an order dated May 02, 2012 directing the District Inspector of Schools (S.E), Purba Medinipur to consider the grievances of the

petitioner as highlighted in his representation and dispose the same by passing a reasoned order after giving reasonable opportunity of hearing to the

petitioner and school authority within a period of twelve weeks from the date of communication of the order and communicate his decision to the

petitioner and school authority immediately thereafter. The District Inspector of Schools (S.E), Purba Medinipur passed an order on August 28, 2012

stating inter alia that the school authority had not taken approval of service continuation of the petitioner from Director of School Education through

District Inspector of Schools (S.E), Purba Medinipur in terms of G.O No. 269SE(Pry) dated April 16, 1996 and the school authority had done unlawful

act as such service continuity of the petitioner from July 16, 1990 is liable to be withdrawn. The school authority and the petitioner were directed to

deposit the overdrawn amount. After the said order was passed the school authority directed the petitioner to refund Rs. 2,63,143/- only by a letter

dated September 25, 2012.

Petitioner further submits that the school authority submitted all relevant papers including service book and last pay certificate to the District Inspector

of Schools (S.E), Purba Medinipur showing last basic pay drawn by the petitioner Rs. 2,120/- and the District Inspector of Schools (S.E), Purba

Medinipur approved and sanctioned the said basic pay taking service of the petitioner in previous school as continuous service. It is the District

Inspector of Schools who is required to take further approval of Director of School Education in terms of G.O. No. 269-SE(Pry) dated April 16, 1996.

As such the impugned order dated 28th August, 2012 passed by the respondent no. 3 is illegal.

Petitioner has filed a supplementary affidavit annexing some relevant documents which were not the part of the original Writ Petition. It appears from

Annexure A to the said supplementary affidavit that the petitioner has made a representation dated 3rd November, 2014, through his

advocate during the pendency of the Writ Petition making the following prayers:

(i) To provide corrected original service book showing actual pay structure drawn by my client.

(ii) To provide last pay certificate duly countersigned by your good office of The Mahishadal Raj High School.

(iii) To provide my client original option and initial pay fixation statement as per ROPA 1998 and 2009.

(iv) Whether the provident fund account has been transferred from Mahishadal Raj High School to Barhat Sambhunath Banipith High School or

not?

The school authority/respondent no. 5 did consider the said representation dated 3rd November, 2014 as appears from his letter dated 10th November,

2014 being annexure B to the supplementary affidavit mainly on the ground of pendency of the present Writ Petition.

It is unfortunate that the State Respondents has shown no interest to contest this case by filing any affidavit-in-opposition against the allegation made

in the Writ Petition or to defend the impugned order passed by the District Inspector of Schools (S.E), Purba Medinipur neither any one appeared on

behalf of the State Respondents at the time of hearing of this Writ Petition in spite of notice although the main allegation is against the State

Respondents in the Writ Petition who has passed the impugned order.

It appears from the impugned order dated 28th August, 2012 being Annexure C at page 84 of the Writ Petition that the representation of

the Petitioner which was considered and disposed of by the respondent no. 3 pursuant to the earlier order passed by this Court on 2nd May, 2012 in

W.P. No. 15153 (W) of 2011 is not sustainable as appears from the following reasons, relevant portion of the said impugned order is as follows:

In terms of G.O No. 269-SE(Pry) dated 16.4.1996, the Director of School Education is the competent authority to give prior approval of

service continuation and the school authority had not taken such approval through the concerned District Inspector of Schools (S.E). In the instant

case the school authority did not follow such rule as such service continuation was not approved by the Director of School Education. The school

authority had done this unlawful act with ulterior motive and malafide intention in favour of Shri Barman. This act is complete unlawful and erroneous

issuing of service continuity in favour of Shri Barman which is liable to be withdrawn. Accordingly, I regret that the petitioner is not entitled to get

relief as he prayed for. Hence school authority as well as petitioner are informed to deposit the overdrawn amount through Treasury Challan in proper

head of account.....

It appears that the respondent no. 3 has relied on a Government Order No. 269-SE(Pry) dated 16th April, 1996 in support of his contention that prior

approval of service continuation was not taken by the school authority from the Director of School Education who is the competent authority but it

appears from the said circular that District Inspector of Schools (S.E) himself was required to move the Director of School Education for pay fixation

in the manner as laid down in the said Government Order dated 16th April, 1996 and there is no fault on the part of the petitioner and if there is any

fault at all that is of the school authority or of the District Inspector of Schools (S.E). Relevant portion of the Government circular being Memo no.

269-SE(Pry.) dated 16th April, 1996 is quoted hereunder:

2.....

..... (a) When the new post does not carry duties and responsibilities of greater importance, the pay shall be fixed at the stage of the time scale

which is equal to his/her in the old post, or if there is no such stage, at the stage next below the existing pay in the former post plus personal pay, equal

to the difference between the old pay and the pay now allowed, to be absorbed in subsequent increases in pay in the new post.

(b) When the latter post carries duties and responsibilities of greater importance than those attached to the former post hold by the increment, the pay

shall be fixed in the time-scale of the new post in the manner as laid down in Para 7 of G.O. No. 492(6)-Edn.(B) dated 26.10.81 issued by this

Department.

(c) The date of increment in the former case shall remain unaltered and in the latter case it shall be on completion of one full incremental period.

(3) Fixation of pay as indicated in the preceeding para shall be made provided that there is no break-in-service between leaving the former post and

joining the better post, reasonable journey-time being not treated as break-in-service.

(4) The Dist. Inspector of Schools shall be required to move the Director of School Education for pay-fixation in the above manner.

(5) This order issues with the concurrence of Finance Department Group A, P (Pay) vide U.O. No. 2068 of Group P (Pay) dt.

4.12.95.....A, -a€

It also appears from the letter of the school authority/respondent no. 5, dated 10th November, 2014 being Annexure A, -P-18A, -a, to the

supplementary affidavit that the representation of the petitioner dated 3rd November, 2014 was not considered by the school authority mainly on the

ground that the instant Writ Petition is pending. The said letter dated 10th November, 2014 by the school authority shows total non-application of the

mind by the school authority and also shows a very irresponsible conduct by saying that he is not in a definite position to say as to whether the transfer

of provident fund account of the petitioner had been transferred from Krishnapur Adarsha Vidyamandir, Dumdum Park to school authority or not and

at the same time he says that he was not in a position to transfer the provident fund account of the petitioner since the petitioner failed to submit

proper application to his school authority in the prescribed form and further saying that it cannot issue or handover L.P.C. and pay fixation memo

under ROPA till the disposal of the present Writ petition though there was no injunction order to this effect in the present Writ Petition.

Petitioner has relied on a decision of Supreme Court in the case of Shyam Babu Verma & Ors. -vs- Union of India & Ors. reported in (1994) 2 SCC

521 Paragraph 11 of which is as follows;

A, -A"11.....

..... Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480/- in terms of the recommendations of the Third Pay

Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560/- but as they have

received the scale of Rs. 330-560/- since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1,

1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps

should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way

responsible for the same.....A, -a€

Considering the submission of the appearing parties and on perusal of relevant records I dispose this Writ Petition by holding that the order of the

Secretary, Mahishadal Raj High School dated 10th November, 2014 refusing to consider the prayer of the petitioner in his representation dated

03.11.14 on the flimsy ground of pendency of the Writ Petition is in total non-application of mind and is bad and illegal and I direct him to consider

afresh the prayer of the petitioner made in his said representation dated 3rd November, 2014 positively within 4 weeks from the date of

communication of this order and any of the requests made in the said representation if he is not in a position to consider the said request then he must

pass a reasoned and speaking order in accordance with law and shall immediately communicate his such decision to the petitioner.

Considering the facts and circumstances as appear on perusal of record and considering the submission of the parties appearing and in view of the

fact that no one appearing and contesting on behalf of the State Respondents and controverting the allegations made by the petitioner in the Writ

Petition I set aside the impugned order dated 28th August, 2012 passed by the District Inspector of Schools (S.E), Purba Medinipur/respondent no. 3

since he has not properly considered the relevant record and paragraph 2, 3 & 4 of the aforesaid Government Order dated 16.4.1996 issued by the

School Education Department and judgment of the Hon'ble Supreme Court in the case of Shyam Babu Verma (supra) and in my view it would be

appropriate to direct the Director of the School Education, West Bengal/respondent no. 2 to consider afresh the case of the petitioner pursuant to the

earlier order of this Court dated 2nd May, 2012 passed in W.P No. 15153 (W) of 2011 by passing a reasoned and speaking order in accordance with

law and after taking into consideration observation made above and the aforesaid judgment of the Hon'ble Supreme Court in the case of Shyam

Babu Verma & Ors -vs- Union of India & Ors. reported in (1994) 2 SCC 521 within 12 weeks from the date of communication of this order after

giving opportunity of hearing to the petitioner or his authorised representative and to communicate his decision to the petitioner within 2 weeks

thereafter and respondent no. 3 will place all the relevant record pertaining to the case of the petitioner before the respondent no. 2 within 2 weeks

from the date of communication of this order.

Writ Petition W.P. No.23389 (W) of 2012 is accordingly disposed. There will be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, supplied to the parties upon compliance with all requisite formalities.