

Dr. Anisur Rahaman Vs State Of West Bengal & Ors.

Court: Calcutta High Court (Appellate Side)

Date of Decision: March 8, 2022

Acts Referred: Constitution Of India, 1950 " Article 300A

Hon'ble Judges: Md. Nizamuddin, J

Bench: Single Bench

Advocate: Sakti Pada Jana, Subhajyoti Das, Avisekh Prasad, Sreetama Neogi, Ankita Dey, Malay Kumar Singh, Raja Ram Banerjee

Final Decision: Disposed Of

Judgement

Md. Nizamuddin, J

Heard learned Advocates appearing for the parties.

Petitioner has filed this Writ Petition being aggrieved by inaction on the part of the respondent teacher-in-charge/Headmaster of the School namely

Mitra Institution (Main), Kolkata, in issuing "No Liability Certificate" in favour of the petitioner and sending the same to State Education

authority concerned for the purpose of disbursement of pensionary benefit as per the Pension Payment Order (PPO) dated 24th February, 2021 issued

by District Inspector of School and non payment of all retiral benefits to the petitioner.

Case of the petitioner in brief are as hereunder.

Writ Petitioner was appointed as the Headmaster of Mitra Institution (Main), Kolkata on 14th May, 2004 and which was approved by the District

Inspector of Schools (SE) on 11th August, 2004 and he retired from his service on 30th June, 2020 and on 29th June, 2020 the Managing Committee

of School unanimously decided that the Assistant Teacher one Mr. Biplab Naha Biswas will be appointed as Teacher-in-charge of the School and that

the Teacher-in-charge will issue "No Liability Certificate" to the petitioner for the purpose of releasing his pension and other retiral benefits. It is

also the case of the petitioner that while processing the pension papers before the State authorities concerned for sanctioning the retiral benefits of the

petitioner, the President of the School (in absence of the Headmaster) issued "No Liability Certificate" with the observation that the petitioner

had no liability to the School. After considering all the relevant papers regarding service of the petitioner the State School authority concerned issued

pension payment order on 24th February, 2021 as appears at Page 35 of the Writ Petition and in view of the aforesaid circumstances the Teacher-in-

charge/Headmaster of the School is duty bound to send on-line "No Liability Certificate" to the State Authority concerned which he failed to do

in spite of repeated request made by the petitioner from time to time and such action of the Teacher-in-charge/Headmaster not issuing the "No

Liability Certificate" in favour of the petitioner without initiating any disciplinary proceeding on charge if any against the petitioner at this retired

stage of his life is causing infringement of his right to livelihood by denial of all retiral benefit including pension after rendering service to the institution

as Headmaster for 16 years.

Learned Advocate appearing on behalf of the respondent School Authority submits that reason for not issuing the "No Liability Certificate" is

that the petitioner has committed illegality and irregularity by appointing the Auditor for audit of the School for the financial year 2017-18, 2018-19 and

2019-20 outside the Government empanelled Auditor which was beyond the official power and function of the Writ Petitioner and the payment of fees

to the Auditor was made from the School fund. The respondent School Authority has annexed a Memo/document to the supplementary affidavit-in-

opposition affirmed on 21st December, 2021 by the respondent Headmaster of the School, issued by the Commissioner of School Education (SE)

dated 15th September, 2021 which appears at Page 8 of the said supplementary affidavit-in-opposition from which it appears that the Commissioner of

School Education has issued the said memo addressing to the Headmaster of the School expressing inter alia his observations and opinions which are

as follows:

"1. Headmaster of a School is not authorized to appoint Auditor for the purpose of audit of his own school. It is the prerogative of the

Commissioner of School Education, West Bengal.

2. The action of the Headmaster in auditing school accounts through his own appointed auditor is to fulfil his vested interest and hence the

Commissioner of School Education, West Bengal is not in a position to ratify this action.

3. The Headmaster himself has to bear the cost of this audit. In case it is paid out of school-fund then school authority has to recover the

amount from him.

4. While issuing No Objection/No Liability Certificate in favour of Dr. Anisur Rahaman, Retired Headmaster of the School, the amount so

spent out of the school fund has to show as liability recoverable from terminal benefit of Dr. Anisur Rahaman, Retired Headmaster of the

School, if he is unable to recoup such expenses to the school.

On perusal of the aforesaid letter dated 15th September, 2021, issued by the Commissioner of School Education, West Bengal, it appears that the main

and only allegation against the petitioner is about unauthorised appointment of Auditor for the purpose of audit of the School which according to him is

prerogative of the Commissioner of School Education and that the then Headmaster/petitioner will have to bear the cost of the said audit which was

paid from the School fund and has to be recovered from him before issuing No Objection/ No Liability Certificate in favour of the petitioner. Apart

from this no other allegation has been referred or indicated against the petitioner in the aforesaid letter/Memo of the Commissioner of School

Education, West Bengal for refusal to issue No Objection/ No Liability Certificate in favour of the petitioner.

Learned Advocate appearing for the respondent School Authority in defending their action submits that there is allegation of defalcation of School

fund against the petitioner during the tenure of his service. When he was asked by this Court that was any disciplinary proceeding initiated against the

petitioner either before his retirement or at the time of retirement or even after his retirement is any disciplinary proceeding pending against the

petitioner to which he admitted that no such disciplinary proceeding was ever initiated at any point of time against the petitioner or is pending.

Respondent submits that there is allegation of misuse of fund of the School by the petitioner and that the respondent Headmaster of the School has

lodged an FIR against the petitioner on 7th December, 2021 for the first time much after retirement of the petitioner on 30th June, 2021 and after filing

of the instant Writ Petition which was filed on 13th April, 2021 and even much longer after affirming the affidavit-in-opposition by the

respondent/Teacher-in-charge/Headmaster of the School which was affirmed on 13th July, 2021 wherein there is no whispering or story of lodging of

any such FIR dated 7th December, 2021 against the petitioner. After fixing the date of final hearing of the Writ Petition on 16th August, 2021 by the

order of this Court dated 29th July, 2021, respondent/Teacher-in-charge/Headmaster by way of supplementary affidavit affirmed on 21st December,

2021 annexed the copy of the purported FIR dated 7th December, 2021 against the petitioner while the petitioner had already retired on 30th June,

2020 that is almost one and a half year after the retirement of the petitioner while the Teacher-in-charge who has lodged the FIR was appointed and

taken charge of the School as Teacher-in-charge on 29th June, 2020. Considering the aforesaid facts as appears from record and particularly the

aforesaid letter/Memo of the Commissioner of School Education dated 15th September, 2021, from which it appears that except the allegation of

unauthorised appointment of the Auditor by the petitioner during the period in question all the allegations and filing of FIR much after filing of Writ

Petition are afterthought since at no point of time any disciplinary proceeding was initiated against the petitioner either during tenure of his service or

even at the time of filing affidavit-in-opposition by the respondent Headmaster which was affirmed on 13th June, 2021 there was no existence of such

FIR against the petitioner till such time. This matter after completion of affidavit was taken by me from time to time from 1st July, 2021, but at no

point of time the respondent School authority came up with any document against the petitioner relating to initiation or pendency of any disciplinary

proceeding nor about lodging of any FIR against the petitioner and no such story of lodging of FIR was made out in the affidavit-in-opposition filed by

the respondent or even after filing of affidavit-in-reply by the petitioner affirmed on 27th July, 2021. It seems that the respondent Teacher-in-

charge/Headmaster having personal grudge against the petitioner and with a vindictive attitude and malafide and just to cover up his fault and to

victimise the Writ Petitioner for coming to this Writ Court has lodged the said FIR for the first time on 7th December, 2021 after completion of

affidavits and after fixation of date of final hearing of this Writ Petition by making desperate attempt to make out a new case in the supplementary

affidavit-in-opposition beyond the scope of its affidavit-in-opposition.

It appears that the School Authority/respondent nos. 5 & 6 have annexed to their affidavit-in-opposition the documents showing total amount of

payment of Rs. 24,000/- made to the said Auditor M/s MC Som Enterprises Chartered Accountant for audit of the School for the financial years

2016-17 and 2017-18, for the period 31st March, 2017 to 31st March, 2018, for the year 2019, and for the period 31st March, 2019 to 31st March,

2020, which according to the respondents was unauthorised.

Petitioner in support of his contention on the issue of withholding of pension and other retiral benefit of the petitioner by the respondents after his

retirement in absence of any disciplinary proceeding, has relied on a decision of this Court in the case of Md Sayed Ali vs- State of West Bengal &

Ors. reported in (2017) 2 CAL LT 129 (HC) and relevant paragraphs 26 to 29 of the said case are quoted hereunder:

“26. In the present case, the allegations against the petitioner has never been proved. That apart, no disciplinary action was

contemplated against the petitioner during his service tenure. Only an enquiry was sought to be made and on the basis of that no conclusion

has yet been reached. Therefore, the authorities are not authorized by law to withhold the pension of the petitioner in view of the aforesaid

scheme. As held by the Hon'ble Apex Court in the case of Durgadas Mukhopadhyay (supra) this Court is of the considered view that

rules are provided for disciplinary proceedings and the same can be initiated against an employee but if a teacher retired, there is no

question of removal or dismissal after retirement. At the same time, there is no scope for contemplating any disciplinary proceeding against

a teacher after his retirement nor a departmental proceeding can be initiated against a retired teacher with retrospective effect. In the

present case, no departmental proceeding was initiated nor was there any scope to inflict any punishment upon the teacher. A departmental

proceeding can continue so long as the employee is in service unless any rule is cited on behalf of the State respondents that even a

departmental proceeding can continue after the retirement of an employee the decision to withhold the pension of the employee as a whole

or in part is without any basis. In this case, complaint was made before the District Inspector of Schools (S.E.), Malda, before the employee

concerned retired, but nothing contemplated as per rules and the employee was allowed to retire. That being so, the action purported to have

been taken by the District Inspector of Schools (S.E.), Malda, against the retired teacher is not sustainable in law. This Court hold that

according to paragraph 19(5) of the Pension Scheme of 1981 it is abundantly clear without any ambiguity that the eligibility and the

entitlement to pension can be reduced or withheld on certain grounds and certain provisions have been provided therein for determining as

to whether the pension should be withheld or in a case it can be reduced. As indicated above, in case any charge of corruption against the

employee, pension can be denied but such corruption has to be proved which is mandatory under the aforesaid scheme. Undisputedly, rather

admittedly, there was no disciplinary proceeding against the present petitioner. Allegations and/or charges of corruption levelled against

him cannot be automatic and in absence of proof no penal action can be taken against the petitioner by way of withholding pension and

other retiral benefits. Since there is no provision under the aforesaid scheme, for contemplating any disciplinary proceeding against the

retired employee, the attempt made by the concerned authorities to withhold pension is contrary to law and liable to be set aside.

27. As held by the Division Bench in the case of Gour Kanti Samanta (supra), this Court is of the view that once the petitioner was allowed to

retire without initiating any disciplinary proceeding or initiating any criminal proceeding, the retirement dues of the petitioner cannot be

withheld. The Division Bench, in the aforesaid case while passing the judgment, considered the decision in the case of State of West Bengal

vs. - Haresh Chandra Banerjee & Ors reported in (2006) 7 SCC 651 wherein it was held that pension is not a bounty payable on the

sweet-will and the pleasure of the Government. Pension is a condition of service of the employee concerned. Pension and pensionary

benefits, which are in nature of deferred remuneration or for service already rendered, have to be released and paid as per the rules.

Pension and other pensionary benefits due and payable to an employee are the property of the employee within the meaning of Article 300A

of the Constitution of India. No person can be deprived of pension and/or pensionary benefits which are his property, except by authority of

law.

28. In view of the observations made above, this Court is of the view that the concerned authorities are not entitled to withhold pension and

other retiral benefits of the petitioner. This Court, therefore, directs the respondent no.5, the District Inspector of Schools (S.E.), Malda, to

issue clearance certificate in favour of the petitioner within a period of four weeks from the date of communication of this order and the

respondent nos.5 and 6 are directed to pass necessary orders for making payment of arrear salaries and other retiral benefits to the

petitioner within a further period of six weeks from the date of issuing of clearance certificate.

29. Since there are serious allegations against the petitioner about the financial irregularities involving Madrasah fund which was, in fact,

paid from the Government Exchequer and is part of public money and inasmuch as the authorities initiated enquiry against the petitioner to

reveal the truth but could not be able to give a complete shape, the State authorities will be entitled to initiate independent appropriate

proceeding against the petitioner if allegation of financial irregularities and/or misappropriation of money could be proved through such

proceedings. The State authorities shall also be entitled to recover the defalcated Government fund, if any. State authorities shall also be

entitled to initiate proceeding after proper enquiry against not only the Headmaster/petitioner but also against such other persons against

whom materials would be revealed as regards misappropriation of public money and commission of criminal breach of trust.

Considering the facts and circumstances of the case as appears on perusal of relevant records available including Writ Petition, affidavit-in-opposition

and reply and supplementary affidavit, submission of the parties and the judgment relied upon by the petitioner as referred above it appears to this

Court that inaction on the part of the respondents Teacher-in-charge/Headmaster of the School concerned in issuing "No Liability Certificate" in

favour of the petitioner till date in spite of repeated request after his retirement on 30th June, 2020 for disbursement of his pensionary benefit as per

Pension Payment Order (PPO) dated 24th February, 2021 and withholding of all retirement benefits by the respondent without proof of any allegation

or charge and without holding any enquiry or initiating any disciplinary proceeding against the petitioner during tenure of his service and allowing him to

retire and in view of admitted facts as appears from record that even on date no any disciplinary proceeding is pending against the petitioner against

the aforesaid allegation, action of the respondent School Authorities concerned not issuing "No Liability Certificate" and withholding of all

retirement benefits of the petitioner including pension, is unjust, unfair, malafide, arbitrary and illegal.

In view of the discussion made above this Writ Petition is allowed by passing the following order/directions:

1) Without going into the merit or legality of the Memo dated 15th September, 2021 issued by the Commissioner of School Education, West Bengal

from which only allegation appears against the petitioner is payment of audit fee from School Fund amounting to Rs. 24,000/- to unauthorised

appointed Auditor for the purpose of audit of School relating to relevant period which was the prerogative of the Commissioner according to him and

was recoverable from the terminal benefit of the petitioner and accordingly considering the aforesaid Memo dated 15th September, 2021, which has

been annexed to the supplementary affidavit by the respondents, petitioner is directed to pay to the School Authority the aforesaid cost of audit

amounting to Rs. 24,000/- within two weeks from date of intimation by the respondent Headmaster of the School concern about the mode of such

payment, that is, by Cheque/Bank draft etc. and in whose name/authority such payment is to be made and such intimation of mode of payment will be

communicated by the Headmaster of the School concerned to the petitioner within a week from the date of communication of this order;

2) Headmaster of the School concerned within a week from the date of receipt of the aforesaid payment of audit cost from the petitioner, shall issue

and send "No Liability Certificate" in favour of the petitioner to the Treasury Officer concerned Barasat II, through the District Inspector of

School (SE), Kolkata with intimation to the petitioner, for the purpose of disbursement of pensionary benefit to the petitioner as per Pension Payment

Order (PPO) dated 24th February, 2021 and all other post retirement arrears.

3) The Director of Pension Provident Fund/respondent no. 2 and District Inspector of School (SE), Kolkata/respondent no. 3, within 6 weeks from the

date of receipt of such "No Liability Certificate" from the Headmaster of the School shall pass appropriate orders for payment of pension and

all other arrears/retiral benefits in favour of the petitioner.

This Writ Petition being WPA No. 9745 of 2022 stands disposed of accordingly with no order as to costs.

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