

Angad Ojha Vs State Of West Bengal And Ors

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 15, 2025

Hon'ble Judges: Partha Sarathi Sen, J

Bench: Single Bench

Advocate: Bhagabat Chowdhury, Subrata Mukherjee

Final Decision: Dismissed

Judgement

Partha Sarathi Sen, J

1. In this writ petition the writ petitioner has prayed for issuance of appropriate writ for cancellation of the memo no.640/law dated October 24, 2013

as passed by the D.I of Schools (S.E) Kolkata, the respondent no.6 herein.

2. By the said memo the respondent no.6 found that the allegation of the writ petitioner regarding his service book as agitated in an earlier round of

litigation being WP no.2679 (W) of 2013 has got no leg to stand upon and accordingly the said D.I transmitted the service book of the writ petitioner to

the D.I of Schools (S.E), Hooghly, for taking next course of action at his end.

3. For effective adjudication of the instant lis the relevant portion of the order dated 11.07.2013 as passed by a Co-ordinate Bench in WP no.2679 (W)

of 2013 is required to be looked into and the same is reproduced hereunder in verbatim:-

“Having heard the learned Counsel appearing for the respective parties as also after considering the fact and circumstances of this case, I find that the

grievance of the petitioner is two folds. Firstly, the proper service book in connection with his service as an assistant teacher of the former school was not sent to

the authority by the respondent no.8. Secondly, the provisional pension has not been released in favour of the petitioner in compliance of the order passed in the

matter of Angad Ojha Vs. State & Ors. (In re: W.P.20279 (W) of 2011).

Since the first issue involved in this writ application relates to a disputed question of facts the respondent no.6 is the appropriate authority to resolve the above

issue. So far as the second issue is concerned, the respondent no. 5 is the appropriate authority to take necessary steps.

In view of the above, I direct the respondent no.6 to take decision with a regard to the first issue as recorded hereinabove by passing a reasoned order in

accordance with law after giving opportunity of hearing to the petitioner and the authorized representative of the respondent no.8 and forward the above

decision to respondent D. 4.5 weeks within two thereafter.

4. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocate for the writ petitioner it appears

to this Court that while passing the order under challenge dated October 24, 2013 the respondent no.6 noticed that initially the writ petitioner joined his

service as an assistant teacher on 06.09.1972 in Adarsha Madhyamik Vidyalaya, Kolkata. Immediately after joining in the said school as an assistant

teacher his service book was opened but for the reason best known to the writ petitioner, the writ petitioner did not put his signature on his service

book after 1989 although several requests were made to him by all the previous head of the institution.

5. It further appears that in course of an enquiry conducted earlier on the basis of a complaint made by the writ petitioner in the year 2011 the service

book of the writ petitioner was updated and the writ petitioner was granted his entire leave as admissible to him and even some special leave without

proper approval from the West Bengal Board of Secondary Education in order to give maximum relief to the writ petitioner.

6. The said reasoned order discloses further that the writ petitioner took unauthorized leave without submitting any proper leave application and prior

intimation to the school authority which is against the leave rules. The respondent no.6 further noticed that the said school authority also found excess

drawal of Rs.1,41,736/-. However, after calculation of the adjustment of leave including some special leave beyond the provisions of leave rules the

excess drawal was calculated to the tune of Rs. 65, 453/- and the writ petitioner was directed to refund the same.

7. In course of hearing learned counsel appearing on behalf of the writ petitioner submits before this Court that the finding as arrived by the

respondent no.6 is faulty since the same is not based on any cogent documents. It is submitted that since the writ petitioner retired long back i.e. on

31.01.2011 the proposed recovery as intended to be made by the respondent no.6 cannot be permitted in view of the ratio of decision in the case of

State of Punjab and Ors. vs. Rafiq Mashfi (White Washer) and Ors. reported in (2015) 4 SCC 334 and in view of a Co-ordinate Bench

judgement and order dated 11.04.2022 as passed in WPA 1758 of 2024. The relevant portion of the reported decision of Rafiq Mashfi (supra) is as

under:-

“10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis

of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent,

that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover

the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders

passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters

of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and

render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

12. Reference may first of all be made to the decision in *Syed Abdul Qadir v. State of Bihar*, (2009) 3 SCC 475, wherein this Court recorded the following

observation in paragraph 58:

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the

employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment

received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter

being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See

Sahib Ram v. State of Haryana, 1995 Supp. (1) SCC 18, *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521, *Union of India v. M. Bhaskar*, (1996) 4 SCC

416, *V. Ganga Ram v. Director*, (1997) 6 SCC 139, *Col. B.J. Akkara (Retd.) v. Govt. of India*, (2006) 11 SCC 709, *Purshottam Lal Das v. State of Bihar*, (2006) 11

SCC 492, *Punjab National Bank v. Manjeet Singh*, (2006) 8 SCC 647 and *Bihar SEB v. Bijay Bahadur*, (2000) 10 SCC 99.

8. In considered view of this Court the reported decision of *Rafiq Mashi* (supra) is no way helpful to the writ petitioner. From the reasoned order

under challenge it reveals that the cause of overdrawal by the writ petitioner is completely attributable to the writ petitioner in view of the fact that in

spite of several requests made to the writ petitioner he had not put his signature in his service book as opened in his first place of employment i.e.

Adarsha Madhyamick Vidyalaya, Kolkata. It further appears to this Court that on careful scrutiny of the entire materials as placed before the

respondent no.6/authority he came to a factual finding that the writ petitioner availed unauthorized leaves without submitting appropriate leave

application as well as without taking prior leave of his erstwhile employer. Materials have been placed before this Court that while passing the

reasoned order the respondent no.6/authority have also noticed that the managing committee of Adarsha Madhyamick Vidyalaya, Kolkata granted

benefit to the writ petitioner by regularizing his unauthorized absence with leaves to which he is entitled and the same managing committee went

further in regularizing the further unauthorized absence with the leaves to which he is not entitled to.

9. This Court further finds that in doing so, the excess drawal amount of Rs.1,41,736/- was reduced to Rs.65,453/-. This Court considers that while

passing the reasons order the respondent no.6 assigned sufficient reason while calculating the excess drawal of Rs.65,453/ by the writ petitioner. The

writ petitioner cannot be permitted to take advantage of his own wrong/fault taking recourse to the salutary principles of law as decided in the case of

Rafiq Mashri and he is thus not entitled to any equitable relief as prayed for.

10. Admittedly, that the writ petitioner was not an employee belonging to class III or class IV service. He retired as a head master of a school. Even

holding a higher post that too in a school, he had acted in such a manner which is completely derogatory to his post and position.

11. This Court finds no error of law in the decision making process of the respondent no.6/authority.

12. The writ petition is thus devoid of any merit and is hereby dismissed.

13. There shall be no order as to costs.

14. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.