

(2013) 12 CAL CK 0001

Calcutta High Court

Case No: W.P. No. 15836 (W) of 2012

Sri Kashi Nath Niyogi

APPELLANT

Vs

The State of West Bengal and
OthersRESPONDENT

Date of Decision: Dec. 24, 2013**Citation:** (2014) 2 CALLT 199 : (2014) 1 CALLT 355**Hon'ble Judges:** Prasenjit Mandal, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Prasenjit Mandal, J.

Challenge is to the orders dated September 12, 2011, April 27, 2012 and June 11, 2012 passed by the Director of Public Instruction, West Bengal with regard to release of pension and other retiral benefits in favour of the writ petitioner after adjustment of leave taken by him during the service period. The petitioner has contended that he retired as an Associate Professor from the Bolpur College, District Suri on September 30, 2009. The Governing Body of the said College fixed the scale of pay and other benefits in favour of the writ petitioner. Thereafter, the writ petitioner challenged the action and inaction on the part of the college authority for giving retiral benefits according to the scheme prevailing at that time by filing a writ petition being W.P. No. 8993(W) of 2011 and the Hon'ble Court, Calcutta directed the Director of Public Instruction, West Bengal to adjudicate the issue, adjustment of overdrawn, if any. Accordingly, upon hearing the petitioner and the college authority, the Director of Public Instruction, West Bengal passed an order for ascertainment of leave adjustment and an Inspection Committee was constituted and the said Committee submitted its report. Accordingly, the Director passed an order on September 12, 2011 directing the college authority to calculate the whole amount of overdrawal by the petitioner during his service tenure and to submit the pension papers including the Service Book complete in all respect.

2. Then the petitioner submitted a representation to the Director of Public Instruction, West Bengal. Subsequently, he filed another writ petition being W.P. No. 19130(W) of 2011 challenging the inaction on the part of the college authority and the order passed by the Director of Public Instruction, West Bengal relating to deferment of increment of 153 days in respect of the period which was treated as extraordinary leave. Accordingly, this Hon'ble Court directed the College Authority to submit the calculation by way of an affidavit.

3. Thereafter, the Director of Public Instruction, West Bengal released the pension w.e.f. October 5, 2009 for one year or till the pension is sanctioned whichever is earlier. The matter went to the Appellate Court and the Appellate Court disposed of the appeal being M.A.T. No. 449 of 2012 directing the College Authority to release the provisional pension within 48 hours from the date of communication of the order passed on March 30, 2012. The Appellate Court also directed that the provisional pension should be released by the concerned authority in accordance with law. The Director of Public Instruction, West Bengal has also been directed to see that pension be released within the period mentioned in the order. Then the Director of Public Instruction, West Bengal directed the College Authority to defer the date of increment for the petitioner for 153 days, by the order dated April 27, 2012 after modifying the earlier order. He requested the College Authority to adjust the overdrawal and recast the Service Book accordingly.

4. The petitioner has contended that such order had been passed without giving any hearing to the petitioner. Similarly, the Director of Public Instruction, West Bengal instructed the College Authority to ask the petitioner to put his signature in the Service Book so that that pension could be released at an earlier date. The Service Book of the writ petitioner was also returned to the College Authority by the letter dated June 11, 2012. Being aggrieved by such orders, this application has been preferred.

5. Now, the question is whether the relief's sought for in the application can be granted in favour of the writ petitioner.

6. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that admittedly, the petitioner was an Associate Professor of the Bolpur College and he retired from service on superannuation on September 30, 2009 and that he is eligible for getting pension and other retiral benefits as per rules applicable for the West Bengal Non-Government Teachers' Death-cum-Retirement Benefit Scheme. Admittedly, he was appointed Lecturer of the said College on March 1, 1975 in the Department of Physics and he went abroad (USA) for higher studies for 5 months and at the time of departure, such period of study leave was not adjusted against any leave. Several questions cropped up, such as, payment for that period, sanction of the leave, date of increment, etc.

7. The petitioner was also appointed as an external examiner in other Colleges by University and as such, he was absent from the College and such period of absence was to be regularised whether the leave of absence could be adjusted against any other leave. The petitioner filed writ petitions and pursuant to the directions of the writ petitions, the respondents considered whether the period of absence could be regularised or adjusted as per norms and appropriate relief/full salary could be given to the petitioner. It was also considered whether the petitioner was entitled to get increment during the period of extraordinary leave. The respondents also took possible steps to accelerate the release of pension in favour of the petitioner.

8. Mr. Chatterjee has drawn my attention to the calculation sheet of salary of the writ petitioner. The overdrawn amount of salary due to half pay leave granted for regularisation of the leave of absence as per order of the Director of Public Instruction, West Bengal pursuant to the W.P. No. 8993(W) of 2011 appearing as page No. 102 and thus, he has contended that such period of grant of half pay leave is not proper in view of the fact that, the writ petitioner was appointed external examiner by the University and so, such calculation of overdrawn amount of salary is not proper.

9. From the materials on record, it does not appear that though the concerned University appointed him external examiner in other Colleges, ever he applied for leave for regularisation of his absence from the College to the Governing Body which is the sanctioning authority, for such period of absence. Accordingly, in order to facilitate the pension to the writ petitioner, regularisation had been done after adjustment of the period of absence against the half pay leave that was admissible to the writ petitioner.

10. On the basis of such overdrawal, the Governing Body of the Bolpur College calculated the amount of overdrawal to the tune of Rs. 1,24,567.76 appearing at page No. 145.

11. The writ petitioner subsequently filed another writ petition being W.P. No. 19130(W) of 2011 contending, inter alia, that the decision of the High Power Committee of 12 members is totally wrong so far as the regularisation of the service after adjustment of the leave, etc. is concerned.

12. By drawing my attention to the page No. 165 of the writ application, Mr. Chatterjee has contended that some of the days were holidays, summer vacation, absence from office owing to being appointed external examiner of another college for practical examination purposes, etc. So, it was not proper to consider the statement that the overdrawn amount is to the tune of Rs. 1,24,567.76.

13. Similarly, Mr. Chatterjee has drawn my attention to the statement of overdrawn salary as calculated as appearing at page No. 164 to the tune of Rs. 5,964.76 from November 1979 to April 1980.

14. Mr. Pinaki Chandra Dhole, learned Advocate appearing for the State has contended that the petitioner having filed a fresh writ application being W.P. No. 19130(W) of 2011 before this Hon"ble Court on November 18, 2011 inasmuch as the Principal of the College Authority did not take an appropriate action in view of the order of the Director of Public Instruction, West Bengal dated August 26, 2011 and September 12, 2011, the present application on the selfsame matter is not maintainable.

15. He has pointed out that as per observations of the College Authority appearing at page Nos. 84 & 85 of the application, the writ petitioner absented himself from the college and he did not file any application for leave and so, the Governing Body of the College was to take appropriate actions for regularization of the absence by granting earned leave, half pay leave and then extraordinary leave. It revealed that the petitioner was informed of granting extraordinary leave without pay w.e.f. October 30, 1979 for a period of 5 months for going to Washington University, USA on a visiting fellowship scheme. On scrutiny of the Acquaintance Roll, it revealed that he had drawn salary during the period and the Governing Body of the College was, therefore, to take a decision upon getting advice from the Director of Public Instruction, West Bengal. Service Book of the petitioner could not be completed because of non-cooperation from the end of the writ petitioner. Thus, he has contended that the instant writ petition is not, therefore, maintainable over the selfsame matter.

16. Mr. Dhole has also contended that so far as the adjustment of the leave is concerned, that was also the subject matter of the earlier writ petition being W.P. No. 8993(W) of 2011. The said writ petition is still pending and so, the subsequent writ petition is not also maintainable. Renewing the same prayer of leave calculation by filing another writ petition is not maintainable at all.

17. Mr. Uday Sankar Chattopadhyaya, learned Advocate appearing for the College Authority has contended that since the petitioner has filed another writ application being W.P. No. 19130(W) of 2011 over the selfsame matter and the said application is still pending, the instant writ petition is not maintainable.

18. Having due regard to the submissions of the learned Advocates of both the sides, I find that pursuant to the directions in the W.P. No. 8993(W) of 2011, the Director of Public Instruction, West Bengal, upon hearing all the concerned including the petitioner and his Advocate, passed a reasoned order dated August 26, 2011 and an Inspection Committee was also formed to facilitate the release of retiral benefits in favour of the writ petitioner.

19. On the basis of such reasoned order and the report, the Director of Public Instruction, West Bengal passed the impugned order dated September 12, 2011 appearing as Annexure-P/7 at page No. 96 wherefrom it appears that the Director of Public Instruction, West Bengal had directed to Principal of the Bolpur College to

calculate the whole amount of overdrawal by the writ petitioner during his service tenure in the Bolpur College in relation to the following matter:--

1. Salary of Dr. K. Niyogi, Ex-Asso. Professor of Bolpur College during his without pay study leave.

2. Enjoyment of earned leave for 139 days (120+19) without having leave at his credit is to be treated as unauthorized leave and salary drawn for those days is also treated as overdrawn amount. However, this unauthorized period of leave is required to be authorized by way of adjustment with half-pay leave (not commuted leave unless E.L granted on medical ground) if stands at his credit.

3. The increment, fell due on 01.03.1980, will be deferred by 153 days and the resulting overdrawn amount due to retaining increment on 01.03.1980 is required to be calculated and adjusted.

20. Beside the above direction, the College Authority and the writ petitioner had also been directed to cooperate so that the pension papers could be submitted to the Accountant General (A&E), West Bengal at early.

21. The Director of Public Instruction, West Bengal has also directed to College Authority to submit the pension paper of the petitioner including Service Book, complete in all respect so that the same may be transmitted to the Office of the Accountant General (A&E), West Bengal for finalization of pensionary benefits of the writ petitioner within the stipulated period as was indicated in the reasoned order dated August 26, 2011. This order of the Director of Public Instruction, West Bengal dated September 12, 2011 is under challenge before this Court under the present writ petition.

22. It reveals from page No. 103 of the application that the said order dated September 12, 2011 passed by the Director of Public Instruction, West Bengal was under consideration in the Order dated December 8, 2011 in W.P. No. 19130(W) of 2011. The overdrawal amount of Rs. 1,24,567.76 was also considered in the said order dated December 8, 2011.

23. Thus, I find that so far as the order of the Director of Public Instruction, West Bengal dated September 12, 2011 is, concerned, the said matter was also the subject matter under consideration in the previous writ petition, i.e., W.P. No. 19130(W) of 2011 which is still pending.

24. Before proceeding to abroad, special leave is required prior to the start of journey from the Director of Public Instruction, West Bengal, but, there is no material on record that the writ petitioner had ever applied for such approval. Accordingly, the Governing Body adjusted the period of absence of 5 months as an extraordinary leave, i.e., without pay from October 30, 1979. As per materials on record, the writ petitioner drew the full salary for the aforesaid period of 5 months, but, this is not permissible.

25. Similarly, the petitioner having no earned leave in his credit, the period of absence of 139 days (120+19) has been adjusted against the half-pay leave which stood in his credit as per order of the Director of Public Instruction, West Bengal. Mr. Arabinda Chatterjee, learned Advocate appearing for the petitioner, has contended that such extraordinary leave is not proper and it should have been adjusted against the leave to be acquired subsequently and that there is no rule for deferring the next date of increment from March 1, 1980 to August 1, 1980.

26. From the materials on record, I find that though the petitioner has annexed service rules, he could not show any rule that while he was sanctioned extraordinary leave for a considerable period, his next date of increment would not be deferred till the end of extraordinary leave.

27. Anyway, such adjustment of leave and recovery of the overdrawal amount being the subject matter of the earlier writ petition being W.P. No. 19130(W) of 2011, in my view, I should refrain myself from making any observation in this regard. Rather I am of the view that the prayer (a) of the writ application of paragraph No. 41 at page No. 67 cannot be entertained in a separate writ petition. There is a scope for consideration of the prayer (a) in the earlier writ petition as noted above.

28. The copy of the Service Book has been furnished and when any leave is taken, the appropriate note is made in the Service Book. But, from the Service Book as prepared in respect of the writ petitioner, it does not indicate that the period of absence was regularised before being absented himself from the College. It is not the situation that the calculation of overdrawn amount or the regularisation of the leave of the writ petitioner had been done in a vindictive way, rather, from the materials on record, it appears that pursuant to the order of the Hon'ble Court, the High Power Committee consisting of 12 members considered the case of the petitioner for fresh calculation of the leave taken by the writ petitioner and the said report of the High Power Committee was submitted to the Director of Public Instruction, West Bengal and it is found that the fresh calculation of leave of three retired Professors of the Bolpur College, namely, Dr. Joydip Pal, Dr. Harinarayan Roy and Dr. Sibsankar Banerjee had been done in the same way as in the case of the writ petitioner and so, there was no discrimination in respect of the treatment of the writ petitioner on behalf of the opposite parties.

29. As noted earlier, the Appellate Court, in M.A.T. No. 449 of 2012, directed the respondent to see that the pension be released within the period mentioned in the order.

30. This matter also relates to the earlier order passed in the W.P. No. 19130(W) of 2011.

31. Therefore, in my view, so far as the prayer (a) of the writ petition is concerned, such prayer is not entertainable in the present writ petition.

32. So far as the prayer (b) appearing at page No. 68 of the application is concerned, I find that the Director of Public Instruction, West Bengal passed two subsequent orders dated April 27, 2012 and June 11, 2012.

33. From Annexure-P/13 appearing at page No. 123 and Order dated June 11, 2012 appearing at page No. 133, it reveals that the order dated April 27, 2012 had been passed pursuant to the directions of the W.P. No. 8993(W) of 2011 for regularization of the leave of absence in the absence of any application on behalf of the writ petitioner.

34. As noted earlier, the writ petitioner having enjoyed extraordinary leave for 5 months w.e.f. October 30, 1979, his next date of increment, i.e., on March 1, 1980 was deferred till the end of the extraordinary leave from that date and as a result, the date of increment was fixed on August 1, 1980 and thereby indicating the next date of increment on August 1, 1981. The College Authority and the petitioner had been directed to cooperate so that the pension papers could be submitted to the Accountant General (A&E), West Bengal at early. I do not find any illegality in the matter.

35. As recorded above, there being no rule that the date of increment would remain the same even while on extraordinary leave, the submission of Mr. Chatterjee that there is no rule to that effect, in my view, cannot be accepted. So, in my humble view, there is no illegality in the order of the Director of Public Instruction, West Bengal dated April 27, 2012. The petitioner was not kept in dark" in the matter. He was duly communicated of the said order.

36. By the order dated June 11, 2012, the Director of Public Instruction, West Bengal directed the Principal of the concerned College to ask the writ petitioner to put his signatures on the Service Book which was to be transmitted to the Office of the Accountant General (A&E), West Bengal and accordingly, the revised Service Book bearing No. 4 was returned to the Principal for necessary steps. Such a recourse had been done in order to facilitate the release of pension in favour of the writ petitioner in view of the order of the Appellate Court in M.A.T. No. 449 of 2012. So, in my view, this order is not against the writ petitioner at all but to facilitate his pension at early as per order of the Appellate Court. Therefore, in my view, this order cannot be described as unethical, opposed to rules to be followed for release of the pension. Thus, I do not find any illegality in the said order. The copy of the said order was forwarded to the writ petitioner with a direction to cooperate with the College Authority so that the Service Book, complete in all respect, could be transmitted to the Office of the Accountant General (A&E), West Bengal. So, in my view, there is nothing to challenge the order dated June 11, 2012 of the Director of Public Instruction, West Bengal.

37. In consideration of the hardship of the writ petitioner, the Director of Public Instruction, West Bengal sanctioned provisional pension by an order dated February

29, 2012. As per materials on record, the College Authority re-submitted the Service Book duly signed by the writ petitioner on September 13, 2012. Thereafter, the Director of Public Instruction, West Bengal did scrutinisation, authenticity and genuineness of the claim of the writ petitioner. The Directorate had to take precautionary measures because of writ cases, proceedings so on and possibly for that reason it was slow in the matter to some extent over it. The Directorate has also contended the plea of shortage of staff, puja vacation, etc. Ultimately, it is found that the Director of Public Instruction, West Bengal has already transmitted the pension papers to the Accountant General (A&E), West Bengal under Memo No. 1921-C dated December 7, 2012. So far as leave encashment is concerned, upon submission of the relevant papers on December 18, 2012, the Director of Public Instruction, West Bengal accorded sanction to make payment of grant-in-aid of Rs. 35,235/- to the College Authority for necessary action, on December 19, 2012.

38. In that view of the matter, I am of the opinion that inasmuch as the writ petitioner has also challenged the orders of the Director of Public Instruction, West Bengal dated April 27, 2012 and June 11, 2012, the writ petition cannot be said to be not maintainable as a whole but the relief's as prayed for cannot be granted in his favour for the reasons discussed above.

39. Accordingly, in my view, I have no other option but to dismiss the writ petition. The writ petition is, therefore, dismissed.

Considering the circumstances, there will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.