(2008) 07 CAL CK 0008

Calcutta High Court

Case No: Writ Petition No. 24445 (W) of 2007

Hare Krishna Sardar		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: July 18, 2008

Citation: (2009) 123 FLR 172 : (2009) 3 LLJ 486

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Saktipada Jana, for the Appellant; Kanailal Samanta, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Soumitra Pal, J.

In the writ petition the petitioner, a superannuated approved assistant teacher in Kamrabad Uchcha Vidyalaya, has challenged the deduction of Rs. 94,342/- by the State from his gratuity as evident from the Pension Payment Order (for short ''the PPO'') dated February 2, 2006.

2. The facts are that the petitioner was appointed on January 1, 1967. Such appointment was approved by the District Inspector of Schools (SE) South 24 Parganas vide order No. 1083 dated July 29, 1974. Initially the scale of the petitioner was fixed at Rs. 300/- per month. Subsequently, with effect from April 3, 1981 the scale of pay was revised as per Government Order No. 372-Edn.(B) dated July 31, 1981 under ROPA 1981 at Rs. 520/- per month. From time to time the scale of the petitioner was revised as per ROPA 1990 and ROPA 1998. On April 1, 1999 the scale of pay with additional increment was Rs. 9175/-. The revision of scale of pay and fixation of pay were recorded by the school authority in the Service Book which from time to time was approved by the District Inspector of Schools. On the date of retirement, that is August 31, 2005, the salary of the petitioner was Rs. 10,675/-.

Submission is, though the petitioner drew salary upon due sanction from the authorities and though before retirement necessary documents were submitted with the school authorities for the purpose of sanctioning pensionary benefits including gratuity which were forwarded to the District Inspector of Schools, yet a sum of Rs. 94,342/- has been deducted from gratuity on account of overdrawal in pay as evident from the Pension Payment Order dated June 2, 2006. Being aggrieved by such deduction this writ petition has been filed.

3. The matter came up for hearing on February 15, 2008 and on April 15, 2008 when directions were issued for filing of affidavits. The matter came up for hearing on May 14, 2008. As no affidavit in opposition could be filed, after hearing the learned advocate for the State, as a last chance, time to file affidavit in opposition was extended till June 4, 2008. Affidavits have since been exchanged and are on record. Reiterating the statements in the writ petition the learned advocate appearing on behalf of the petitioner submitted that since scales of pay were granted so long with the approval of the District Inspector of Schools, such deduction is uncalled for and illegal. Moreover, the deduction made is against the principles of natural justice as no hearing was granted. Learned advocate for the petitioner had relied on the judgment of the Division Bench passed on September 7, 2007 in F.M.A. No. 342/2007, Abdul Kalam Md. Abdul Jalil v. State of West Bengal and Ors. in support of his contentions.

4. The learned advocate appearing on behalf of the State submitted that as mistakes were detected by the audit department in the fixation of pay of the petitioner as per ROPA 1981, ROPA 1990 and ROPA 1998, the authorities are competent to recover the said sum from the pension or gratuity or both within four years after the date of retirement under chapter XI of the West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 which stipulates that in respect of matters for which provision has not been made in the scheme the relevant provisions in the West Bengal Services (Death-cum-Retirement Benefit Rules) 1971 shall apply mutatis mutandis subject to the approval of the State Government. Referring to the judgment of the Apex Court in Laxman Prasad Vs. Prodigy Electronics Ltd. and Another, 8 Supreme 442 and in the Secretary to Government of Agriculture and Co-operation Government of A.P. and Ors. v. K. Kesarulu (2007) 8 Supreme 683 it was submitted that a mistake does not confer any right to any party and can be corrected and since the audit department had pointed out mistakes, the State is well within its rights to rectify the same by making deductions.

5. The issues which come under consideration are : first, whether deduction can be made without giving the retiree an opportunity of hearing and secondly whether the affidavit filed by the State contains necessary particulars regarding the fact of alleged overdrawal by the petitioner. With regard to the first issue whether natural justice is to be complied or not, in my view, since the action of deduction involves

consequences detrimental to the petitioner it was incumbent upon the State to afford the affected party an opportunity to present his case. Any unilateral decision, as has happened in this case, calls'' for intervention by issuing appropriate order. In the instant case as admittedly no hearing was granted, the action of deducting a sum of Rs. 94,342/- cannot be sustained. So far as the second issue is concerned though it has been stated in the affidavit in opposition that the fixation of pay as per ROPA 1981, ROPA 1990 and ROPA 1998 was mistakenly done and hence, the State is entitled to recover, no particulars with reference to the Service Book or Government, records have been furnished in support of such contention. The affidavit filed after extensions of time is totally bereft of particulars. Except some bald submissions on legal aspects nothing is there in the affidavit. In this regard reference may be made to paragraph 10 of the affidavit where a statement has been made that "my office duly intimated about the overdrawal amount to the Headmaster". However, there is no reference to the date of intimation and no annexation of the copies of the relevant records in support of the statement. In fact the affidavit in opposition filed on behalf of the District Inspector of Schools (S.E.) South 24- Parganas is of no assistance. In short the assertions made in the petition have virtually gone uncontroverted. It is least expected from the concerned District Inspector of Schools, since the matter was adjourned to enable him to file affidavit controverting the statements in the writ petition which in my opinion the said respondent has woefully failed to do, Rather the statements made in the affidavit in opposition is a tell tale account of how the efficiency of the respondent No. 3 has reached its nadir. Hence, the action of the respondents, a sheer harassment to a person in his twilight years, is highhanded, arbitrary, mala fide and illegal. Thus, the deduction of Rs. 94,342/- as evident from the P.P.O. dated February 2, 2006 cannot be sustained and is set aside and quashed. The writ petition is allowed. Therefore, the Secretary Education Department, respondent No. 1, the District Inspector of Schools (S.E.), South 24 Parganas, the respondent No. 3, the Director of Pension, Provident Fund and Group Insurance, respondent No. 2, The Treasury ''Officer, Baruipur, South 24 Parganas, respondent No. 4 are directed to refund the said amount of Rs. 94,342/- within a fortnight from the date of presenting the certified copy of this order along with interest at the rate of 10% per annum to be calculated from the date of retirement till the date of actual payment. The respondents are also directed to refix the pension on the basis of last pay drawn also within a fortnight from the date of presentation of such copy of this order. The petitioner is entitled to costs which is assessed at Rs. 5,100/- to be paid by the District Inspector of Schools (S.E.) South 24 Parganas, the respondent No. 3.

6. Urgent xerox certified copy of the judgment and order, if applied for, be given to the appearing parties on priority basis.