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Calcutta High Court

Case No: Writ Petition No. 3414 (W) of 2012

Asish Bindu Maiti		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: Oct. 8, 2013

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: Sakti Pada Jana, for the Appellant;Mintu Kumar Goswami, Advocate for the State, for the Respondent

Final Decision: Disposed Off

Judgement

Sambuddha Chakrabarti, J.

The petitioner was an approved Assistant Teacher of Sundarban Adarsha Vidyamandir. He retired from service with effect from March 31, 2010. Although his pension papers were sent to the concerned District Inspector of Schools in time he had not received the retiral benefits for a very long period and he filed a writ petition being WP No. 9936(W) of 2011 before this court. The said writ petition was disposed of by a learned single judge of this court by an order dated September 9, 2011. It appears from the order that the reason for withholding the retiral benefit of the petitioner was that due to wrong pay fixation of the petitioner some excess amount had been paid to him. The retiral benefits had not been paid to him as the excess payment has not been recovered from him.

2. The single judge held that the respondents were not justified in withholding the payment of the retiral dues of the petitioner and disposed of the writ petition directing the concerned authorities to calculate the retiral dues by taking into consideration his last drawn salary without deducting any amount on account of overdrawal in pay from the retiral dues of the petitioner and directed to issue Pension Payment Order accordingly so that the entire retiral dues including the pensionary reliefs could be paid to him within eight weeks from the date of the

communication of the order.

3. The court, however, further held that though recovery of excess payment from the retiral dues of the retired employee was not permissible but he cannot claim the pensionary relief for the current months on the basis of his last drawn salary which was not admissible to him on the date of his retirement. As such the court directed the concerned authority to ascertain the entitlement of the petitioner with regard to his pay and allowances which was admissible to him as per law as on the date of his retirement and calculate the admissible pensionary relief payable to the petitioner accordingly.

4. The petitioner alleges that pursuant to the said order the District Inspector of Schools (SE), South 24 Parganas by a memo dated November 24, 2011 requested the school authorities to submit the papers as per the observation made by the Joint Director of Accounts showing the overdrawal statement with effect from April 1, 1986 to March 31, 2010 and to suggest the mode of recovery.

5. The petitioner says that he had received a Pension Payment Order dated January 27, 2012 wherefrom it appears that his last pay of Rs. 25,240/- has been reduced to Rs. 24,190/-. As a result he has been paid lesser pension and gratuity which has been calculated on the basis of the reduced pay.

6. By this writ petition the petitioner has prayed for a writ in the nature of Mandamus commanding the respondents to recalculate the retiral dues of the petitioner on the basis of the last drawn salary and to forward the papers to the appropriate authority, to cancel the Pension Payment Order issued in favour of the petitioner.

7. Although liberty was granted to the respondents to file affidavit-in-opposition they have not filed any affidavit and no prayer for extension of time was made by the respondents. But Mr. Mintu Kumar Goswami, the learned advocate for the state respondents was present at the hearing.

8. After hearing the learned advocates for the parties and after going through the petition it appears that there is sufficient justification for the petitioner to feel aggrieved. The order passed by the learned single of this court has not been challenged. So this order had attained finality. The communication made by the District Inspector of Schools (SE), South 24 Parganas asking the concerned school authorities to prepare the overdrawal statement of the petitioner and asking him to suggest the mode of recovery clearly went against the order of the learned single judge. But since this court in the earlier writ petition had held that the petitioner could not claim pensionary reliefs on the inadmissible last drawn salary and directed the respondents to ascertain the entitlement of the petitioner with regard to the admissible pay and allowances and calculate the pensionary reliefs thereon, the subsequent exercise taken by the respondents is justified. In view of the order the pensionary benefits are to be fixed on the basis of the admissible pay and

allowances of the petitioner. Since that has been done the same cannot be interfered with.

9. The writ petition is disposed of in terms of what has been discussed above.

10. There shall, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.