

Constitutional Writ

Present: The Hon'ble Mr. Justice Jayanta Kumar Biswas.

Judgment on: March 12, 2010.

W.P. No. 22563 (W) of 2007

Debadiprosad Choudhury

v.

State of West Bengal & Ors.

POINTS:

Recovery of Overpayment---The Assistant Director of Pension, Provident Fund and Group Insurance, West Bengal, whether can direct refixation of petitioner's pay and recovery of overpayment---Service Law

FACTS:

The petitioner is a retired secondary school teacher. Though he was entitled to retirement benefits, alleging certain overpayment during the term of his employment payment was withheld.

HELD:

The officials raising the objections acted unfairly and without jurisdiction.

PARA-5

No law has empowered the pension sanctioning authority (the District Inspector of schools) or the scrutiny authority (the official concerned of the Director of Pension, provident fund and group insurance) to sit in appeal over and upset the decisions of the several District Inspectors of schools who had approved the pay fixation in 1986 and 1996. The official giving the impugned decision exceeded his jurisdiction by ordering refixation of pay and recovery of overpayment. The Court is of the view that the recovered amount should be refunded with interest.

PARA-6

CASES CITED:

Syed Abdul Qadir & Ors. v. State of Bihar & Ors., 2009 (1) Supreme 163

Mr Subroto Mukherjee and Mr Ganesh Banerjee, for the petitioner.

The Court:

1.The petitioner in this art.226 petition dated October 5, 2007 is aggrieved by the decision of the Assistant Director of Pension, Provident Fund and Group Insurance, West Bengal dated September 10, 2007, Annexure P8 at p.40, directing refixation of his pay with effect from January 1, 1986 and recovery of overpayment.

2.The petitioner was a secondary school teacher. He retired from service on November 30, 2004. Though he was entitled to retirement benefits, alleging certain overpayment during the term of his employment payment was withheld. He moved W.P. No. 20280 (W) of 2006 under art.226. By an order dated September 20, 2006 the authority was directed to examine the relevant questions and give a decision. Accordingly the impugned decision was given.

3.By an order dated July 1, 2008 the petition was admitted in presence of the state's advocate who was directed to file opposition. No opposition has been filed and none appears for the state.

4.There is nothing to show that the wrong fixation of the petitioner's pay, pointed out in the impugned decision, was the outcome of any misrepresentation or fraud exercised by the petitioner. He exercised option according to his understanding and on the basis thereof the district inspector of schools concerned approved the fixation of pay by the institute.

5.Accordingly, under the subsequent ROPA Rules his pay was fixed at the corresponding stage of the scale concerned. Till the date of his retirement from service none objected to the fixation. In my opinion, the officials raising the objections acted without jurisdiction and unfairly. In view of the Supreme Court decision in Syed Abdul Qadir & Ors. v. State of Bihar & Ors., 2009 (1) Supreme 163 alleging wrong pay fixation the respondents

could not recover any amount from the petitioner's retirement benefits. They had no right to take advantage of their own wrong.

6. Besides, no law has empowered the pension sanctioning authority (the district inspector of schools) or the scrutiny authority (the official concerned of the director of pension, provident fund and group insurance) to sit in appeal over and upset the decisions of the several district inspectors of schools who had approved the pay fixation in 1986 and 1996. The official giving the impugned decision exceeded his jurisdiction by ordering re-fixation of pay and recovery of overpayment. I am of the view that the recovered amount should be refunded with interest.

7. For these reasons, I allow the petition, set aside the impugned decision and order as follows. Within four weeks from the date of communication of this order, the Director of Pension, Provident Fund and Group Insurance, West Bengal shall refund the recovered amount, recalculate the petitioner's retirement benefits on the basis of pay at the date of his retirement and pay the balance benefits, if any; on all payable amounts interest at the rate of 6% per annum shall be paid from December 1, 2004 till the date of actual payment. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)