

02.12.2024.
Item No. 4.
Court No. 13
ap

CPAN 1039 of 2024
With
I.A. No. CAN 1 of 2024
Saumen Kumar Bhattacharjya
Versus
Shri Dushyant Narial Principal Secretary,
Government of West Bengal & Anr.
In
WP.ST. No. 169 of 2011
Saumen Kumar Bhattacharjya
Versus
State of West Bengal & Ors.

Mr. D. N. Ray, Id. Sr. Advocate,
Mr. Sourav Halder,
Mr. Rajesh Kumar Shah.

...For the petitioner.

Mr. Somnath Ganguly, Id. A.G.P.,
Mr. Bikash Goswami,
Ms. Tuli Sinha.

...For the State.

1. Clarification is sought by the State in CAN 1 of 2024 of the order of a Co-ordinate Bench of this Court dated 5th July, 2023 passed in WP.ST. No. 169 of 2011, after the contempt application is filed.
2. The contempt application and the clarification application have been assigned to this Bench since the original Bench passed the order dated 5th November, 2024 releasing the matter.
3. The clarification application was actually quite unnecessary. The brief facts relevant to the case are that the petitioner was a retired Force Commissioned Officer. The petitioner was engaged as a Platoon Commander by the State (GD & TRG) under the West Bengal National Volunteer Force on 6th November, 1995. The petitioner superannuated from service of the State in 2019.

4. The State mistakenly since 1995 has been paying the last drawn pay of the petitioner with the Indian Air Force. The State (a lower scale) has mistakenly ignored the Circular dated 22nd September, 1995 issued by the Finance Department which stipulated that a re-employed Military pensioner would get a pay scale as fixed by the State and not the pay scale he was drawing with the Air Force.

5. The State Authorities thereafter sought to effect recovery from the petitioner's salary and allowances. The petitioner challenged such recovery before the West Bengal Administrative Tribunal, by way of application O.A. No. 2789 of 2005 which was disposed of by an order dated 7th April, 2011. The West Bengal Administrative Tribunal allowed protection against recovery of excess amount was granted to the petitioner. The Tribunal did not protect the mistakenly higher pay granted to the petitioner. It is, therefore, automatically implied that the petitioner could not have been paid the salary which was drawing as a Commissioned Officer of Indian Air Force under his service with the State.

6. The petitioner challenged the order of the West Bengal Administrative Tribunal under Article 226 of the Constitution, before this Court being WP.ST. No. 169 of 2011. The said writ petition was disposed of by a Co-ordinate Bench of this Court in the order dated

5th July, 2023. The operative portion of the order dated 5th July, 2023 is quoted hereinabove:

“11. As noted above, writ petitioner was issued the appointment letter on November 6, 1995 after the Finance Department Memo dated September 14, 1995 giving effect to from August 1, 1995. Therefore, it cannot be said that the rules of the game were changed so far as the writ petitioner is concerned, subsequently.

12. In such circumstances, we find no merit in the present writ petition. However, in our view, interest of justice would be subserved by continuing with the overdrawal protection that the tribunal afforded to the writ petitioner. Moreover, the authorities will disburse all pensionary benefits that the writ petitioner is entitled to taking into consideration the memo dated September 22, 1995 and the overdrawal protection granted, within a period of four weeks from date.”

7. It appears from the submissions of the Counsel for the State and the records that notwithstanding the order of the Tribunal dated 7th April, 2011 passed by West Bengal Administrative Tribunal continued to grant higher IAF pay scale to the petitioner until the date of retirement in the year 2019. This appears to be clearly a mistake and error on the part of the alleged contemnors. The petitioner's salary ought to have been reverted to the scale that he was entitled to under the State atleast from 7th April, 2011.

8. This Court finds that the petitioner was put to notice of the mistake on the part of the State in order dated 7th April, 2011 passed by the West Bengal

Administrative Tribunal as confirmed by a Co-ordinate Bench of this Court in its order dated 5th July, 2023.

9. The Dicta of the Hon'ble Supreme Court of India in the case of ***State of Punjab and Ors. vs. Rafiq Masih (White Washer) & Ors., reported in (2015) 4 SCC 334*** cannot be applied to the petitioner post April, 2011.

10. It would be relevant here to refer to the decision of the Supreme Court in ***Col. B.J. Akkara Vs Government of India & Ors. reported in (2006) 11 SCC 709***. Para 28 of the said decision is set out herein below, which clearly applies to the facts of this case.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

11. It is submitted by the Counsel for the State that the aforesaid mistake occurred out of indecision on the part of the Authorities in view of the pendency of the proceedings before the Tribunal and this High Court.

12. This Court is unable to accept that the said mistake could have occurred especially after the clear and specific order of the Tribunal dated 7th April, 2011. The petitioner ought to have reverted to have his salary that he was actually entitled to under the State service in terms of the Memo dated 22nd September, 1995.

13. In those circumstances, this Court directs that there shall be no recovery of overdrawal from the petitioner's salary upto 7th April, 2011. For the excess salary paid from May, 2011 till the date of the petitioner's superannuation, the State shall be entitled to recover all excess amounts.

14. Let recoveries from May, 2011 of excess payment to the petitioner by the State be effected from the terminal benefits of the petitioner, preferably spread over in six installments. Let pension payable to the petitioner be calculated forthwith in terms of the aforesaid order and the same be disbursed to him together with arrears from the date of retirement till date. The arrears shall carry interest at the rate of 7% per annum.

15. At the discretion of the State instead of six installments, the recoveries from the petitioner can be effected against the arrear payable to him as directed hereinabove.

16. It is expected that the Pension Payment Order is issued to the petitioner within two weeks from date by the Office of the Accountant General (A&E), West Bengal and the other respondents. Let all recoveries be effected and pension be released to the petitioner by the Treasury Officer concerned after receipt of Pension Payment Order into the Bank Account of the petitioner, where he was receiving his salary.

17. In view of the clarification of the order of a Co-ordinate Bench of this Court granted hereinabove, nothing further remains to be adjudicated in the contempt application.

18. CPAN 1039 of 2024 shall stand disposed of.

19. Rule, if any, shall also stand discharged.

20. In view of the aforesaid, CAN 1 of 2024 is allowed and disposed of.

21. There will be no order as to costs.

22. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)