

S/L. 90.
28.08.2019
MNS

**Calcutta High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction**

WPA 345 of 2019

**Bipul Chandra Paul
Vs.
The State of West Bengal and others**

Mr. Jagriti Mishra

...for the petitioner.

Mr. Subir Kumar Saha,
Ms. Bedashruti Bose

...for the respondents.

The predicament of the present petitioner is that the petitioner was promoted with retrospective effect from August 29, 1989, during his service, by virtue of an order passed by a co-ordinate bench of the Principal Seat in W. P. No. 12705(w) of 2012. However, prior to that, the petitioner had opted for the option of implementation of the ROPA Rules since January 1, 1998, little knowing that a different option would be more beneficial to him in view of the subsequent promotion effected with retrospective effect.

However, even after the said retrospective promotion, the petitioner continued in service and, subsequent to his retirement on July 31, 2018, the Additional Executive Officer of the

Cooch Behar Zilla Parishad communicated with the petitioner indicating that, in terms of the option chosen by the petitioner, an amount of Rs. 1,16,529/- (Rupees one lakh sixteen thousand five hundred and twenty nine) only had been overdrawn by the petitioner, which was to be recovered from the petitioner.

The petitioner, under such compelling circumstances, wrote to the District Magistrate, Cooch Behar, virtually admitting the amount due for withdrawal but submitting that the petitioner was in immense financial hardship for which he was not in a position to deposit the huge amount from his cash reserves. Accordingly, by such letter dated October 3, 2018, the petitioner opted for a deduction of the overdrawn amount from his gratuity and requested the authorities to take necessary measures so that the petitioner was disbursed his retiral benefits to provide for his family in those days of necessity.

Subsequently the petitioner, in view of his stringent financial condition, made a representation before the authorities detailing the entire error committed by the petitioner in opting for applicability of the ROPA Rules from January 1, 1998, by virtue of which, in fact, the petitioner lost substantial remuneration

due to having opted for such rules, instead of an earlier option dated August 1, 1998. The petitioner, in the said representation, asked for a reconsideration of applicability of the date of application of the ROPA Rules with effect from January 1, 1998 as per the ROPA Rules, 1998, in order to get the benefit of the latter.

It is argued on behalf of the petitioner that the petitioner was not in a position to know that he would be promoted with retrospective effect at the juncture when he opted for the ROPA Rules with effect from January 1, 1998.

However, it is too late in the day for the petitioner, after his retirement and having continued in service for six years even after filing of the writ petition, without having sought for a change in such option regarding ROPA Rules.

Moreover, it is doubtful whether there was any scope for the petitioner to make a change in such option at such a belated stage, despite him being a victim of circumstances.

Learned counsel for the petitioner cites in this context the judgment of ***State of Punjab and Others ETC. Vs. Rafiq Masih (White Washer) etc. reported at (2015) 4 SCC 334,*** for the proposition that if the court arrives at a

conclusion that recovery, if made, from the employee would iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover, the court had an option to interfere in the matter.

However, in the present case, since the petitioner already communicated with the authorities asking for a deduction from his gratuity amount, the petitioner is now estopped from taking shelter under *Rafiq Masih (supra)*.

Moreover, it is not permissible under any statute for the petitioner to change his option regarding the applicability of the ROPA Rules post-retirement.

In fact, as is evident from the initial communication of the petitioner to the authorities after his retirement, the financial hardship of the petitioner itself stood in the way of the petitioner being able to repay the amount in any other manner than from his gratuity or his other retiral benefits. Since the petitioner opted for deduction from his gratuity in preference to such deduction from his other retiral benefits, the representation-in-question given by the petitioner does not stand good ground and as such, there is no scope for the

authorities to consider the representation in any manner whatsoever.

In such view of the matter, despite having full sympathy for the petitioner due to his financial condition, there is no other option for this court but to dismiss the present writ petition.

Accordingly, WPA 345 of 2019 is dismissed.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)