

12-12-2019
Court No.3
Ab
SI/14.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
WRIT APPELLATE JURISDICTION
APPELLATE SIDE**

W.P.A. 982 OF 2019

**Mana Das
Vs.
The State of West Bengal & Ors. .**

Mr. Debajit Kundu
. . .For the Petitioner.

None appears for the State when the matter is called on for hearing.

Affidavit of service filed in Court today is kept with the record.

In the present case the husband of the petitioner is aggrieved by the order of deduction of the overdrawn amount of a sum of Rs. 77,928/- after her husband retirement. The husband of the writ petitioner was an Assistant Teacher who retired from service on June 30, 2005 and the pension was paid by the authorities on January 11, 2007 after deducting the aforesaid amount as overdrawn amount. Husband died on July 26, 2019.

The issue as to whether overdrawal of pay can be adjusted against the retiral dues of a retired employee is no longer res integra in view of the decision of the Hon'ble Supreme Court in **Shyam Babu Verma & Ors. Vs. Union of India & Ors., reported in (1994) 2 SCC 521** and also in a later decision in the case of **Syed Abdul Qadir & Ors. V. State of Bihar & Ors. reported in (2009) 3 SCC 475.**

Counsel on behalf of the respondent authorities submits that there is no considerable delay in approaching the Writ Court and accordingly, the Writ Court should not allow such a prayer.

A co-ordinate Bench judgment of this Court in the **Shiba Rani Maity V. The State of West Bengal in W.P. 29979(W) of 2016** as well as **Biswanath Ghosh V. The State of West Bengal in W.P. 27562 (W) of 2016** has categorically held that in a case where no third party right accrues, the petitioner who has suffered due to non-payment of the withheld amount on account of alleged overdrawal has a right to approach the Writ Court and get relief. The relevant paragraphs of the judgement are quoted below:-

- “(15) The only other question is that whether the writ petition should be entertained in spite of delay of about 17 years in approaching this Court. In a judgment and order dated 6 September, 2010 delivered in MAT 1933 of 2010 passed by a Division Bench of this Court and held that although the petitioner had approached the Court after a lapse of nine years, no third party right had accrued because of the delay and it was only the petitioner who suffered due to non-payment of the withheld amount on account of alleged over-drawal. Accordingly the Division Bench set aside the order of the Learned Single Judge by which the writ petition had been dismissed only on the ground of delay.
- (16) Following the Division Bench judgement of this Court adverted to above, I hold that it is only the petitioner who suffered by reason of the wrongful withholding of the aforesaid sum from his retiral benefits. Although there has been a delay of about 17 years in approaching this Court, the same has not given rise to any third party right and allowing this writ application is not going to affect the right

of any third party. It may also be noted that the Hon'ble Apex Court observed in its decision in the case of Union of India Vs. Tarsem Singh, (2008) 3 SCC 648 that relief may be granted to a writ petitioner in spite of the delay if it does not affect the right of third parties”.

In view of the above judgment, it is clear that a Writ of mandamus lies in the present facts and circumstances of this case.

I, accordingly, the respondent authorities to release the amount of Rs. 77,928/- to the petitioner along with interest @ 8% per annum with effect from the date of issuance of the pension payment order, within a period of eight weeks from the date of communication of this order.

The petitioner has undertaken before this Court that he shall not claim any further benefits on account of the pension that is being paid to him based on the last drawn pay as per the pension payment order dated January 11, 2007.

W.P.A. 982 of 2019 is disposed of with the above directions.

Since no affidavit has been called for, all allegations made in the writ petition are deemed to have been denied.

Urgent certified copy of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(RAJARSHI BHARADWAJ, J)