05.02.2021
SL No.69
Court No.12
(dns/gc)

FMA 1088 of 2017
With
CAN 1 of 2018
(Old No: CAN 732 of 2018)

Chittaranjan Patra
Vs.
State of West Bengal & Ors.

(Via Video Conference)

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.,
Mr. Soumik Ganguli,
Mr. Arunava Maiti,
Mr. Sourat Nandy
...for the Appellant.
Mr. Amal Kr. Sen, Ld. A.G.P.,
Mr. Jaladhi Das,
...for the State.

This appeal is arising out of an order dated 28th November, 2016 in a writ petition in which the writ petitioner has objected to a deduction of Rs.458736/- from the retiral benefits receivable by the petitioner on account of overdrawal or otherwise. The learned Single Judge dismissed the writ petition on consideration of the report filed by a Committee constituted by the Court to look into the allegation of overdrawal. There is no dispute that the petitioner was in the employment of the Bidhanchandra Krishi Viswavidyalaya since 1st January, 1981 till he retired on 31st January, 2015 as a Senior Field Assistant attached to the RRSS, Raghunathpur, D/Research, BCKV. On 29th January, 2015 the Registrar Acting, issued an order by which the scale of pay of the appellant was revised and refixed as a consequent whereof it was found that he had overdrawn Rs.458736/- towards salary. After he was retired on 31st January, 2015, the Registrar issued a Memo dated 4th March, 2015 by which Viswavidyalaya recovered excess salary amounting to Rs.458736/- from the retirement benefits of the writ petitioner. Viswavidyalaya realized the aforesaid amount out of gratuity. This order of the Viswavidyalaya was challenged before the learned Single Judge. The learned Single Judge during the hearing of the writ petition constituted a Committee to look into the allegations of overdrawal of salaray and on the basis of the report filed by the Committee disclosing instances of employees similarly placed drawn excess salaries did not interfere with the order of the Registrar and dismissed the writ petition. Although the attention of the learned Single Judge was drawn to the ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.*** reported in ***(2015) 4 SCC 334*** which is the case holding the field with regard to the right of the employer to realize overdrawal amount, the learned Single Judge relying on the observation made in Paragraph 18 that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement, applied the said observation contextually to the findings of the Committee that over a period of time number of employees have been benefited by wrong fixation of pay scale, refused to exercise discretion in favour of the writ petition and dismissed the writ petition. It is against this order of dismissal that the appeal has been preferred.

From the conspectus of facts emanating from the pleadings and also from the submission made on behalf of the parties it cannot be disputed that the writ petitioner is not responsible for the wrong fixation of the pay scale. It is not the case of the University or the State that during the course of his employment, the writ petitioner has made any misdeclaration or has produced any forged and/or fabricated documents or any misrepresentation to get a higher scale of pay.

The learned Counsel for the State has submitted that every time there is a pay fixation and an undertaking is obtained from the employee that any amount which may be drawn by him in excess of what is admissible to him on account of erroneous fixation of his pay in the revised scale of pay as soon as the fact of such excess drawal comes to his notice or is brought to his notice, he would refund such excess amount and, accordingly, the employee cannot at this stage question the propriety of the action taken by the University in realizing the amount paid in excess. In short, it is submitted that if at the time of taking benefit of a revised higher scale of pay, the concerned employee gives an undertaking and if the rule permits as the case may be that any excess amount so paid is liable to refund then such employee would be bound by such undertaking.

Earlier to ***Rafiq Masih*** (supra) in ***Syed Abdul Qadir Vs. State of Bihar*** reported in ***(2009) 3 SCC 475***, the Hon'ble Supreme Court considering the similar circumstances has stated clearly that except in cases where:

(a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee.

(b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

(c) it is found that the employee had knowledge that the payment received was in excess of what was due or wrongly paid.

(d) an error is detected or corrected within a short time of wrong payment.

No overdrawal is to be deducted from the retirement benefits of the employee.

The aforesaid principle was reiterated in ***B. Radhakrishnan Vs. State of Tamil Nadu & Ors.*** reported in ***(2015) 17 SCC 507 paragraphs 16 and 17*** which reads:-

*"**16**. Applying the same principle to the facts of the case in hand, we notice that firstly, the respondents issued an order sanctioning stepping up of the pay scale of the appellants on the strength of the order of High Court. Secondly, while claiming this relief,*

the appellants neither committed any fault nor made any incorrect/false statement to secure the benefits because it was being claimed only on the basis of parity and lastly, the appellants rendered their services for the period in question.

***17**. In the light of these reasons and further keeping in view the short controversy involved in the case which is somewhat akin to the case of Shaym Babu (supra), we are of the view that similar directions, which were given in the case of Shaym Babu, can also be given in these appeals against the respondents. In other words, it shall only be just and proper not to recover any excess amount from the appellants, which has been paid to them on the basis of stepping up of their pay scale. It is much more so when as mentioned above, the appellants have given up their challenge to the respondent's main action taken against the appellants objecting for the grant of benefit of stepping up of their pay and confined their attack to the issue of recovery of excess amount from them."*

In the instant case, in absence of any allegation of fraud or misrepresentation or manipulation of service record or presence of any of the instances which would have disqualified the employee to get the benefit of overdrawal, we feel that the respondent authorities do not have any right or authority to realize the amount paid in excess towards salary. Looking at it from the equitable point of view it can be safely concluded that it would be inextricably inequitable and unjust if excess payment is now deducted from the retiral dues when the fact remains that the employee is not at fault at all. It is immaterial as to whether a Committee comes to a different conclusion that such mistakes had occurred in cases of many, however, we in such cases find that the employees concerned were responsible for such wrong fixation and it is not necessary for us to come into such conclusion since it is clear from the record that the petitioner has an unblemished service record and he has not contributed to such wrong fixation of pay scale.

We feel that the case of the petitioner squarely comes within sub-paragraphs (2), (3) and (4) of Paragraph 18 of the ratio in **Rafiq Masih** (supra) and the other judgments referred to in this order.

On such consideration, we set aside the order under appeal.

We allow the appeal and direct the respondent authorities to refund the same sum of Rs.458736/- within four weeks from date, however, without any interest.

The pension, however, shall be paid in accordance with the revised pay fixation.

The appeal and the connected application, accordingly, are disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya, J.) **(Soumen Sen, J.)**