

23-02-2021

ct no. 13

Sl.8

pk

**WPA 1557 of 2019
(Through Video Conference)**

**Dilip Kumar Bose
Versus
State of West Bengal and others**

**Mr. Manas Kumar Ghosh,
Ms. Susmita Dey (Basu)
...for the petitioner**

**Ms. Sonal Sinha,
Mr. Sumit Roy
... for W.B.M.I.C.**

The writ petitioner is aggrieved by an order effecting recovery of about Rs.8,79,672/- out of Rs.14,29,550/-. The dues claimed are retirement dues and under the heading "Gratuity and Leave Salary".

However, recovery was effected from terminal dues on account of the fact that the petitioner had wrongfully been paid for a period from 2009 to 2017. The wrongful benefit was in the nature of an increment under the MCA Scheme despite having availed two increments under the previous CA Scheme.

At the time when arrears have been paid to the petitioner and his pay scale was revised, it was undertaken by the petitioner albeit at the instance of the employer, that if it is subsequently found that the petitioner was not

entitled to the additional increment, he would refund the same to the West Bengal State Minor Irrigation Corporation (WBSMIC). At the time of calculation of the petitioner's terminal benefits post superannuation from 28.02.2017, the mistaken payment was detected and a sum of Rs.8,79,672/- has been deducted. The balance sum of Rupees five lakhs and odd was paid to the petitioner after 22 months without any interest. In fact in the order dated 17th May, 2018 it was found that the benefit under the MCA was wrongfully given to three other persons along with the petitioner.

The petitioner would argue by reference to the decision of the Supreme Court in the case of **State of Punjab and others Versus Rafiq Masih and others reported in (2015) 4 SCC 334**, particularly paragraph 18 that the petitioner being a Group "C" employee and the recovery having been made post retirement of a sum being paid to him since 8 years prior to his retirement, it would be illegal, unjust and inequitable on the part of the employer, to effect recovery.

This Court notes that the said decision of Rafiq Masih was rendered after due consideration of various other decisions of the Supreme Court. One of the two exceptions discussed in the said Rafiq Masih decision is

that when the employee concerned was under due notice of the illegality of payment made to him and secondly when a fraud has been purported by the employee.

Insofar as the first exception, it has been held that the notice of mistaken payment and recovery thereof must occur within a reasonable time i.e. about one year or less for it to be justifiable.

Counsel for the West Bengal State Minor Irrigation Corporation (WBSMIC), however, relies upon the decision of the Supreme Court in the case of **High Court at Punjab and Haryana and others Vs. Jagdev Singh reported in (2016) 14 SCC 267**. It appears that in the said decision a recovery was made from the Civil Judge (Senior Division) of sums of money paid in excess. The Supreme Court in the said decision upheld the recovery by holding that an employee who is paid any amount against an undertaking to refund the same, in the event the same is found in excess, is bound by such undertaking.

This Court notes that in the instant case the petitioner had undertaken in writing to refund, in the event of any mistake, as a precondition for being allowed benefit of MCA Scheme in the year 2011 with effect from 2009.

The petitioner, therefore, knew at every point of time since 2011 that payment of extra

increment and revised pay scale was subject to scrutiny. He enjoyed the increments for 8 long years without being entitled to do so.

It has not been argued in the writ petition that the petitioner in any way altered his position by reason of expecting retirement benefits amounting to Rs.14,29,550/-. There are no hardships pleaded to outweigh the equity in favour of the employer to recover the wrongful payment.

What is sought to be recovered albeit post retirement is an excess payment against the undertaking to refund the same.

This Court is of the view that merely because the respondent in the Jagdev Singh decision (supra) was a Civil Judge (Senior Division), would not exempt the petitioner (admittedly a group C employee) from the exception to the Rafiq Masih decision (supra) as carved out in the Jagdev Singh's case (supra).

For the reasons stated herein above, no relief can be granted to the writ petitioner except that he shall be entitled to interest @ 9% per annum on delayed payment of Rs.5,49,878/- for the period from date of superannuation i.e. February, 2017 till date of actual payment i.e. 27.12.2018.

With the aforesaid directions, the instant writ petition is disposed of.

All parties are directed to act on a server copy of this order on usual undertakings.

(Rajasekhar Mantha, J.)