

10.03.2021
Ct. No.13
Sl. No.22
akd

W.P.A. 1559 of 2019 [via video conference]

[Chandra Nath Bandyopadhyay -Vs- The State of West Bengal & Ors.]

Mr. Partha Sarathi Bhattacharyya
Ms. Ankita Dey
Mr. Raju Bhattacharyya
... .. for the petitioner

Ms. Sonal Sinha
... .. for the WBSMIC

The writ petitioner was appointed as Lower Division Assistant with the respondent no.3 on 2nd January, 1984. He was allowed two benefits unlawfully in course of service which are the subject matter of lis before this court.

One was an increment under the Modified Career Advancement Scheme (MCAS) which amounted to a third Career Advancement increment. The second was an increase in the emoluments of the petitioner by reason of equalisation of pay. Equalisation was granted in the year 2009 and MCAS benefit in the year 2010. The petitioner enjoyed both the aforesaid undue and unlawful benefits until his super-annuation on 31st January, 2017. At the time of release of retirement benefits, the respondents sought to recover the aforesaid two benefits enjoyed by the petitioner.

It is contended by the respondents in the pleadings before this court that the petitioner having already enjoyed the benefit of previous Career Advancement Scheme (CAS) could not have availed any benefit under the MCAS in the year 2010 as the same is specifically barred. In so far as the equalisation of pay is concerned, admittedly, the petitioner had given an undertaking

at the time of grant, that if found to be disentitled, the petitioner would refund the same back to the respondents.

Since there is already an undertaking given by the petitioner on the benefit enjoyed by him under equalisation of pay, the recovery by the respondents cannot be faulted at this stage.

In so far as the wrongful MCAS benefit is concerned, Mr. Partha Sarathi Bhattacharyya, learned counsel for the petitioner would argue by reference to a series of judgements particularly in the case of ***State of Punjab vs. Rafiq Masih*** reported in ***(2015) 4 SCC 334*** particularly paragraphs 7, 17 & 18 thereof and the case of ***B. Radhakrishnan vs. State of Tamil Nadu*** reported ***(2015) 17 SCC 507*** (paragraphs 15 to 18) that the same cannot be recovered, post retirement.

Learned counsel for the respondents relied upon a decision of the Hon'ble Supreme Court in the case of ***High Court of Punjab & Haryana vs. Jagdev Singh*** reported in ***(2016) 14 SCC 267*** in support of their right to effect such recovery.

It follows from the dicta in the aforesaid decisions cited by the parties that ordinarily recoveries of benefits enjoyed by an employee albeit wrongly, should not be recovered from the terminal benefits if the benefits are being enjoyed for a very long period of time.

Exceptions have been carved out by the Hon'ble Supreme Court. The exceptions being when the employee knew of the illegality of the benefit being conferred on him and avails the same, recovery can be made. If the employee is guilty of

fraud or any such act which was the reason for his getting the illegal benefit in the first place, indeed recoveries could be made. Cases where undertakings have been given or the benefit conferred has not reached a finality or approval by the authorities and the undertaking is to the effect of agreeing to refund the excess benefits, if found illegal, are also those where the employer can effect recovery.

It is specifically urged by the writ petitioner in the exception taken to the report filed by the employer that he had no knowledge of any illegality or any disentitlement to the MCAS benefits. He further submits that he did not participate in any process of coercion or misrepresentation to the employer while obtaining the benefit. It is also stated that it would be inequitable to effect recovery two years after super-annuation.

This Court notes that the petitioner is a Group 'C' employee. It has indeed been laid down in the **Rafiq Masih** decision (*supra*) that ordinarily recoveries cannot be made for any extra benefit given to Group 'C' and 'D' employees.

However, if one takes a holistic view of the decision of **Rafiq Masih** and the subsequent decisions following **Rafiq Masih** of the Supreme Court as also the Division Bench of this court, it would be clear that conclusive formula or exhaustive instances have not been laid down by the Hon'ble Supreme Court as observed in the **Rafiq Masih** decision itself. Indeed it would be onerous on the Group 'C' employees to effect recovery when they have legitimate expectation of enjoying a particular amount of retirement benefits.

One must also bear in mind that public funds allocated to pay for public service obtained is not a treasure chest for loot or dole.

In the case at hand the petitioner was a Lower Division Assistant in the Establishment Section of the West Bengal State Minor Irrigation Corporation Limited. It is difficult for this court to accept that a Group 'C' employee and that too a Lower Division Assistant would not know that the benefit under the MCAS cannot be allowed to somebody who has already enjoyed two increments under the CAS.

The Establishment Section of the West Bengal State Minor Irrigation Corporation Limited is responsible for effecting all service benefits and entitlements allowed by the State Government to its employees. A Lower Division Assistant is somebody who in fact makes entries based on the said circulars albeit on instructions from the Head of the section.

In the instant case, the petitioner is stated to have placed the service book for signature before the sanctioning authority. It is not known if there was any overt act on the part of the petitioner in obtaining the wrong benefit.

This Court, therefore, in the interest of justice directs the Managing Director of the West Bengal State Minor Irrigation Corporation Limited to cause an enquiry either by himself or through a sufficiently senior person in the organisation to look into as to whether the writ petitioner played any active role in the process of conferring on himself the additional benefit of increment under the MCAS which he was otherwise not entitled to.

The enquiry must reveal the nature of duties performed by the petitioner. The circumstances under which the sanctioning authority had entered and approved the service book of the petitioner with the additional unauthorised benefit under the MCAS must also be looked into along with any other relevant circumstances.

Let such enquiry be completed within a period of three months from the date of receipt of a copy of this order.

The authority shall be entitled to deduct the benefit received by the petitioner under the equalisation of pay in view of the undertaking already given.

This Court has noted the submissions of Mr. Partha Sarathi Bhattacharyya, learned advocate appearing for the petitioner that till date the employer has not passed any formal order of recovery of any amount from the petitioner's retirement benefits. All recoveries made or proposed to be made had come out in the report filed by the employer for the first time before this court.

Any decision as regard the recovery from the terminal benefits of unauthorised increments under the MCAS may be taken by the authority pursuant to the enquiry as ordered hereinabove. If the enquiry goes against the petitioner, he shall be afforded an opportunity of hearing prior to final orders by the authority.

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

There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)