

WPST 29 of 2020

**State of West Bengal & Ors.
Vs.
Kaliprosad Mondal & Anr.**

ar

Mr. Tapan Kumar Mukherjee, Ld. A.G.P
Mr. Pranab Halder
...For the Petitioners

Mr. Pinaki Bhattacharyya
Mrs. Nibedita Barui
Mrs. Nandini Sharma
...For the Respondents

This writ petition is directed against an order passed by the West Bengal Administrative Tribunal on 29th January, 2019 in O.A 1307 of 2016. The original applicant/respondent no. 1 herein filed the said application before the Tribunal inter alia praying for a direction upon the respondents for refund of an amount of Rs. 69,736/-, which was recovered from the retiring gratuity of the applicant on the ground of excess payment due to wrong fixation of pay.

The defence of the present writ petitioners before the Tribunal that on the verge of retirement i.e. 18th February, 2015 the applicant/respondent no. 1, a Constable working in Lalbag Caontoment, Murshidabad, had undertaken in writing that he was paid Rs.4875/- since 1st April, 2000 instead of Rs. 4725/- and the excess amount paid to him would be realised from his retirement benefit.

Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader, has strenuously argued before us that this aspect of the matter has not been taken into consideration by the Tribunal while allowing the prayer of the writ petitioner/respondent no. 1 for refund of the

excess amount along with interest.

The effect of an undertaking extracted from an employee at the time of his retirement was being considered by two division benches of this Court in WPST 25 of 2015 (*Asitosh Bhattacharya Vs. State of West Bengal & Ors.*) reported at (2015)2 Cal LT 339 (HC) and CAN 4386 of 2018 in MAT 398 of 2018 (*The Director of Pension, Provident Fund & Group Insurance, Govt. of West Bengal & Anr. Vs. Rajkumar Jana & Ors.*). It was held by such coordinate benches that the petitioner is in no way responsible for overdrawal of salary and the employer cannot realise the said overdrawal amount on the verge of his retirement, relying upon the decision in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer)* reported in (2014)8 SCC 883.

Mr. Mukherjee also submits that the Tribunal has not taken into consideration the subsequent decision of the Hon'ble Supreme Court in the case of High Court of *Punjab & Hariyana Vs. Jagdev Singh* reported in (2016)14 SCC 267.

A coordinate bench has decided the matter on similar facts after taking into consideration the decision of Jagdev Singh (supra) and distinguished the said decision. Reference in this regard may be made in the case of *Rajkumar Jana & Ors.* (supra). The relevant paragraphs 10 to 13 are reproduced below wherein the relevance of Jagdev Singh (supra) was discussed:-

“10. In **Jagdev Singh** (supra) the challenge was against a direction issued by the State to the Accountant-General for the recovery of an excess payment towards salary of the employee who submitted an undertaking before receiving the revised pay. The said employee was suspended

and was thereafter compulsorily retired. The rules on the basis of which the pay of the employee was fixed and benefits disbursed with effect from January 7, 2002 were once again revised with effect from January 01, 1996, though the said revised rules were notified on May 7, 2003, in view of the acceptance of the recommendations of the First National Judicial Pay Commission by the Court in a writ petition. In those facts, the recovery process was upheld, but in the instant case, the respective R.O.P.A Rules, on the basis of which the petitioner's salary was revised and fixed, having not been subsequently altered. Furthermore, in the instant case, the State by a circular dated July 19, 2010 detailed the specific circumstances in which overdrawal can be recovered irrespective of any undertaking given by the employee.

11. In our view the learned single Judge is correct in holding that the case of **Jagdev Singh** (supra) is clearly distinguishable on the facts and it is well settled that one little difference in the facts will free the court from being bound by the ratio of a decided case. The judgment of the court cannot be read as a statute. The court needs to find out the ratio of the judgment. The court needs to analyse the judgment to find out the law decided by the court on the given facts and circumstances of the case.

12. It is trite law that a judgment is an authority for what it decides and not what can be logical inferred from it. On such considerations, we are in agreement that the observation made by the learned Single Judge in paragraphs 9,10 and 11 of the impugned judgment, which reads as follows is correct:

“9. The mere fact of the petitioner having put his signature on the pro forma and thereby agreeing to abide by the undertaking to

refund does not warrant that a deduction shall be made on account of alleged overdrawal spanning over a period of more than three decades. The undertaking executed pertains to refund of an amount drawn "in excess of that is admissible". In the instant case the petitioner's pay was fixed on the basis of the approval memo dated 27th September, 1989 issued by the respondent no. 7. The said approval memo having not been altered, rectified or withdrawn by the competent authority, it cannot be said that the fixation of pay as per the ROPA Rules and the consequential benefits were not admissible to the petitioner. Admittedly steps were taken by the respondents towards recovery after the petitioner's retirement. Once the petitioner retired, the master and servant relationship ceased and the relationship existed only for the purpose of payment of terminal benefits to the petitioner on the basis of the situation existing on the date of his retirement. The contractual relationship between the parties terminated with the situations that existed on the date of retirement and hence the respondents were no longer empowered to change the concluded terms of contract unilaterally and without any sanction of law.

10. The pension sanctioning authority cannot withhold the disbursement of the petitioner's pensionary benefits on the basis of tentative audit observations. Such observations cannot be construed to be sacrosanct and merely on the basis of the same the pension sanction authority cannot revise the pay fixation to the detriment of the petitioner after his retirement. The scale in terms of the ROPA Rules was fixed by the authorities concerned on their own and there was no any participation of the petitioner in the process of such re-fixation. It is also not a case that the pay fixation was compulsive in nature having been made in terms of any interim order of this Court.

11. The respondents have not come out with a case that the petitioner is in any way responsible for erroneous fixation of his pay scale. The pay scale of the petitioner was revised from time to time. Such revision was not only noted in the service book but also authenticated by the appropriate authority. Standard of living of every person rises with the increase of his income. Thus, whatever additional benefits a person received by way of increment in his salary during his service period, are all normally spent with the rise of

his standard of living. The retired person cannot subsequently recover the said amount from the person to whom such payment was made in lieu of the benefits which he received therefrom. Thus, if this equitable consideration is taken into account, then it should be held that the respondents who are at fault, should not be allowed to recover the said amount from the retiral benefits, of a retired person."

13. *At this stage in absence of any challenge being thrown to the audit observation mentioned in the memo dated 4th November, 2016 alleging overdrawal and payment of excess amount based on wrong fixation of pay, we feel that any payment made after 4th November, 2016 towards pensionary benefits and/or retiral benefits is liable to be recovered and/or adjusted against future retiral benefits. The memo dated 4th November, 2016 is relevant only to decide the propriety of the claim made by the appellants at this distant point of time from the writ petition allegedly on account of wrong fixation of pay for which admittedly the writ petitioner was not responsible. We have already found that there was no concealment of fact on the part of the writ petitioner in submitting the relevant documents for scrutiny during his tenure and the writ petitioner cannot be asked at this stage to refund amounts alleged to have been paid in excess on the basis of an audit observation for which he was not responsible. At this stage any demand for recovery on the alleged ground of re-fixation of pay would not only be inequitable but also arbitrary. However, we are not unmindful of the fact that any payment made on the basis of such wrong fixation cannot continue beyond 4th November, 2016 as it has been accepted at the bar that there could have been a wrong fixation of pay scale which was identified vide memo dated 4th November, 2016."*

On such consideration we feel that the direction passed by the Tribunal cannot be interfered with. The Tribunal has decided the matter rightly.

Accordingly, the writ petition being WPST 29 of 2020 fails and is hereby dismissed.

There will be no order as to costs.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of all undertakings.

(Hiranmay Bhattacharyya,J.)

(Soumen Sen, J.)

