

5.3.2021
438,ct.15
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W.P.A.5592 of 2021
Aklema Khatun
Vs.
The State of West Bengal & Ors.

Ms. Arpita Saha
... For the Petitioner.

No one 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 wife of the deceased employee is aggrieved by the order of deduction of the overdrawn amount of a sum of Rs. 11,450/- after her husband retirement. The husband of the writ petitioner was an Assistant Teacher who retired from service on 31.03.2002 and the pension payment order was issued on January 8, 2003 after deducting the aforesaid amount as overdrawn amount. Husband died on 26.08.2008.

The issue as to whether overdrawal of pay can be adjusted against retirement dues of an employee has been settled in the case of Shyam Babu Verma & Ors.Vs. Union of India & Ors., reported in (1994) 2 SCC521 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 judgement of this Court in the Shjiba 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. 11,450/- to the petitioner along with interest @ 4% 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 8.1.2003.

W.P.A.5592 of 2021 is disposed of with the above directions.

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

(Rajarshi Bharadwaj, J.)