

03
08.09.2021.
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 9904 of 2021
(Via Video Conference)**

**Biswajit Das
-versus
The State of West Bengal & Ors.**

**Mr. Arjun Roy Mukherjee,
Ms. Debapriya Mitra.
...For the Petitioner.**

**Mr. Jyotosh Majumder.
...For the Respondent No.3**

**Ms. Tapati Samanta.
...For the State.**

The petitioner retired from service on 31st January, 2019. Pension Payment Order was issued in his favour on 30th July, 2019 wherein an amount of Rs.1,48,115/- has been shown to be deducted on account of overdrawal salary.

In terms of an earlier communication made to the petitioner requesting refund of overdrawal amount, the petitioner, on 1st April, 2019, deposited a sum of Rs.20,160/- only by way of challan in the Treasury.

In July, 2021 the petitioner noticed that the pension which was deposited in his Bank Account has been reduced. Initially a sum of Rs. 26,548/- was paid to him on account of pension but thereafter the same stood reduced to Rs.14,991/- only.

The petitioner immediately made a representation to the Assistant Director, Directorate of Pension, Provident Fund and Group Insurance through the Treasury Officer on 29th July, 2021.

The Additional Treasury Officer by a communication dated 30th July, 2021 wrote to the Director, Directorate of Pension, Provident Fund and Group Insurance that there is no revision data available in respect of the Pension Payment Order of the petitioner. The Additional Treasury Officer requested the Director, Directorate of Pension, Provident Fund and Group Insurance to settle the pensionary benefit as per rules.

The petitioner thereafter, through the Treasury Officer made series of representations to the Assistant Director, Directorate of Pension, Provident Fund and Group Insurance praying for payment of pension which was initially granted in his favour, but none of them has been replied by the authorities.

According to the petitioner, he is a Group 'C' employee and the benefit under the Career Advancement Scheme was paid to him since 1994.

The petitioner relies upon the Circular of the Finance Department No. 5630-F(P) dated 28th October, 2016 amended by the Circular No. 3665-F(P)/FA/O/2M/187/16(N.B.) dated 12th June, 2017 which specifically mentioned that the cases where pay has been fixed/settled under Court orders with due concurrence of Finance Department irrespective of whether the concerned employees retired or is in service shall not be reopened.

It is the specific case of the petitioner that his pay has been fixed pursuant to the order passed by the Court.

Be it mentioned that the petitioner approached this Court earlier by filing several writ petitions and the basic pay of the petition was fixed thereafter.

The petitioner also relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of State of Punjab & Ors. -vs- Rafiq Masih (White Washer) & Ors. reported in (2015) 4 SCC 334 wherein the Hon'ble Supreme Court laid down the situations where recovery by the employees would be impermissible in law.

It mentioned that recovery from the employees belonging to Group 'C' or Group 'D' service, when the excess payment has been made for a period in excess of five years before the order of recovery is issued and from the retired employees or the employees who are due to retire within one year of the order of recovery is impermissible.

In the instant case, recovery has been made from a retired employee who was in Group 'C' service and the alleged excess payment was made to him since 1994.

The petitioner also relies upon the order dated 3rd August, 2021 passed in WPA 12065 of 2021 (Reena Shome -vs- The State of West Bengal & Ors.) wherein the Court held that as the benefit of Career Advancement Scheme has been withdrawn from the pay of the petitioner without disclosing the reason thereof, the District Library Officer and the Secretary,

Local Library authority was directed to communicate the petitioner the reasons as to why the CAS benefit will not be payable to her.

The Court further directed the District Library Officer to specify, with details, the breakup of the amount which the petitioner is entitled to receive and her basic pay pursuant to which her pension is to be fixed.

The petitioner has prayed for refund of the amount which has been deducted with interest and to restore the CAS benefit to him.

The learned advocates appearing for the respondent Director of Library Services and the State respondents submit that the overdrawal payment which has been deducted from the petitioner is liable to be refunded to him in terms of the order passed by the Hon'ble Supreme Court in the matter of Rafiq Masih (supra).

As regard the fixation of the pay of the petitioner, it has been submitted that the pay pursuant to which his pension has been fixed is erroneous. The respondents submit that the pay of the petitioner is required to be re-fixed after rectification of the error.

The respondents rely upon a decision passed by the Hon'ble Division Bench of this Court in the matter of State of West Bengal & Ors. -vs- Smt. Ila Giri & Ors. reported in 2014(3) CLJ (Cal) 271 wherein the Court directed that the pensionary benefit will be given to the writ petitioner after re-fixing his last pay in service.

The respondents submit that the pay of the petitioner has been erroneously fixed and accordingly, the authorities may be permitted to rectify the erroneous fixation of pay.

Upon hearing the submissions made on behalf of the parties and upon perusal of the materials on record, it appears that the petitioner retired from service on 31st January, 2019 and after retirement his pension has been reduced suddenly in July, 2021 without giving him any notice and without affording him any opportunity of hearing.

The ten years CAS benefit was paid to the petitioner since 1994. The same has suddenly been sought to be taken away by the respondents without affording any opportunity of hearing to the petitioner.

The Court on an earlier occasion on the writ petition filed by the petitioner being W.P. 14728 (W) of 2003 by an order dated 8th March, 2016 categorically held that the impugned order was passed without affording the petitioner any opportunity of hearing. The same was vitiated due to breach of principles of natural justice.

Once again the authorities revised the pension paid to the petitioner without affording an opportunity of hearing to him. The same is contrary to the principles of natural justice.

The deduction on account of overdrawal is also impermissible in view of the order passed by the Hon'ble Supreme Court in the matter of Rafiq Masih (supra).

In view of the above, the instant writ petition is disposed of by directing the respondent No. 6 being the Director, Directorate of Pension, Provident Fund and Group Insurance to take a decision with regard to the representation dated 4th November, 2019 annexed at page 59 of the writ petition made by the petitioner strictly in accordance with law, after giving an opportunity of hearing to the petitioner or his authorized representative and all other necessary parties, at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order. The said respondent shall pass a reasoned order and communicate the same to the parties immediately thereafter.

In the event if it transpires that the pension of the petitioner was wrongly re-fixed, then the said authority shall take steps to refund the amount which the petitioner is entitled to in accordance with law.

The Treasury Officer shall refund to the petitioner the amount of Rs.1,48,115/- which has been deducted from his retiral dues on account of overdrawal salary within a period of four weeks from date.

WPA 9904 of 2021 stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)