

03.08.2021
SL No. 6
Court No. 24
(A.B.& P.M.)

WPA 12065 of 2021

**Reena Shome
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Arjun Roy Mukherjee,
Ms. Saheli Mukherjee
... for the petitioner

Ms. Tapati Samanta
... for the respondent No. 4

Mr. Amal Kumar Sen, A.G.P.
Mr. Jaladhi Das
... for the State.

The petitioner, a retired librarian, is aggrieved by the act of the respondent authority in deducting a sum of Rs. 5,809/- only from her gratuity, as overdrawal amount and by refixing her pension.

The District Library Officer, Purba Burdwan by a communicating memo dated 19th February, 2020 writes to the Director of Pension Provident Fund and Group Insurance, West Bengal that as per audit observation the petitioner will not be entitled to ten years' CAS benefit with effect from 11th April, 1993. The pay of the petitioner has been recasted with effect from 11th April, 1993 to the date of superannuation. The District Library Officer, opined that the overdrawal amount of Rs. 5,809/- only may be recovered from the retiral gratuity of the petitioner. Pension Payment Order has also been issued in favour of the

petitioner indicating that a sum of Rs. 5,809/- has been deducted on account of overdrawal salary.

According to the petitioner the overdrawal was impermissible in view of the law laid down by the Hon'ble Supreme Court in the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. reported in (2015) 4 SCC 334 wherein the Hon'ble Supreme Court categorically laid down instances where recovery by the employers shall be impermissible in law. If the employee belongs either to class - III or class - IV service and if the excess payment has been made for a period of excess of five years before the order of recovery was issued, recovery is impermissible.

In the instant case the petitioner belongs to class - III (Group C) service and the payment in excess was made for more than five years before issuance of the order of recovery.

In view of the aforesaid decision passed by the Hon'ble Supreme Court respondent authorities cannot be permitted to deduct the alleged overdrawn amount from the retiring dues of the petitioner.

The petitioner further prays for a direction upon the respondent authorities to refix her pension by restoring ten years' benefit under CAS and to release the arrear amount with interest.

The petitioner relies upon two memos issued by the Finance Department, Govt. of West Bengal dated 28th October, 2016 and 12th June, 2017. 2016 memo mentions

that the pay of existing employees fixed otherwise may be refixed in terms of that memo and over payment of pay and allowances made in this regard may be recovered immediately. However, the cases in which the employees have already retired and their pension cases have already been settled by the orders of the Hon'ble Court otherwise need not be reopened. Amendment memo dated 12th June, 2017 amends the last sentence of the earlier memo dated 28th October, 2016 and mentions that however 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.

According to the petitioner as her pay was fixed in accordance with the order passed by the Court as appearing from the memo dated 4th September, 2015 at pages 24 and 25 of the writ petition, it will be impermissible for the respondent authorities to reopen her case only for the purpose of refixation or refund of the overdrawal amount.

The learned advocate representing the respondent authorities relies upon a letter written by the petitioner to the District Library Officer wherein she agreed to return the aforesaid amount of Rs. 5,809/- only by way of adjustment from her gratuity. It has been submitted that as per her consent to return the aforesaid amount, the same has been deducted from her gratuity.

It has been contended that as the petitioner relinquished her right by giving the aforesaid consent letter, accordingly the petitioner is estopped from filing the instant writ petition praying for refund of the said amount.

ROPA 1990 where the Career Advancement Scheme and related issues are mentioned has been placed before this Court. It appears that an employee whose pay is fixed in any of the revised scales of pay and who has not got a single promotion/advancement to a higher scale in the same post even after completion of eighteen years continuous and satisfactory service, shall be placed in the next higher scale of pay, his designation remaining unchanged.

The scheme further mentions that all teaching and non-teaching employees of Government sponsored/aided institutions shall be entitled to an additional increment in the revised scale of pay for every ten years of continuous and satisfactory service counted from the date of appointment.

According to the respondents there has been a revision of pay in the service of the petitioner in the year 1988. As the petitioner was appointed in the year 1983 her first increment on account of CAS ought to be payable from April, 1994 and not from 1st January, 1988 as is reflected in the memo dated 4th September, 2015 annexed at page 24 of the writ petition.

It is the categorical submission of the respondents that as within the first ten years of service the pay of the petitioner had already been revised, accordingly she will not be entitled to any benefit under the Career Advancement Scheme. It has also been submitted that the pay which was wrongly fixed is required to be revised and the petitioner ought to be paid in accordance with the proper scale of pay which she is entitled to.

The respondents rely upon an unreported order dated 5th February, 2021 passed by the Hon'ble Division of this Court in FMA 1088 of 2017 with CAN 1 of 2018 (Chittaranjan Patra Vs State of West Bengal & Ors.) in support of the submission that the pension of an employee may be paid in accordance with the revised pay fixation.

The learned advocate for the respondents submits that the memo dated 28th October, 2016 and the amendment memo dated 12th June, 2017 are applicable only in respect of the Government employees and not in respect of the Librarians appointed by the Mass Education Department in sponsored / aided libraries. As the petitioner has averred in paragraph 3 of the writ petition that she was appointed in the post of Librarian of a Government sponsored rural library, accordingly the benefit extended in the aforesaid two memos will not be applicable in her case.

After hearing the submissions made on behalf of both the parties it appears that the deduction which has been made from the gratuity of the petitioner is certainly

impermissible in view of the order passed by the Hon'ble Supreme Court in the case of Rafiq Masih (supra). The petitioner admittedly is a class - III employee and the excess payment has been made in her favour for more than five years prior to the date of refund of the overdrawal amount. Accordingly, the respondent authorities are directed to refund the overdrawal amount of Rs. 5,809/- only which was deducted from the gratuity payable to the petitioner. The refund shall be made at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

With regard to the prayer of the petitioner for refixation of her pay by granting benefit of the Career Advancement Scheme it appears that the District Library Officer on 19th February, 2020 intimated the Director of Pension, Provident Fund and Group Insurance that the ten years' CAS benefits will not be payable to the petitioner with effect from 11th April, 1993. No reason whatsoever has been mentioned as to why the ten years' CAS benefits will not be payable to her from 11th April, 1993. The petitioner entered service on 11th April, 1983 and according to CAS the petitioner is entitled to receive increment after ten years of continuous satisfactory service.

As the benefit of CAS has been withdrawn from the pay of the petitioner without disclosing the reason thereof accordingly, the respondent No. 4 i.e. District Library Officer and the Secretary, Local Library authority is directed

to communicate the petitioner the reason(s) as to why the ten years' CAS benefit will not be payable to her with effect from 11th April, 1993.

The District Library Officer will clearly 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 aforesaid details shall be communicated by the District Library Officer to the petitioner at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

In the event it is found that the petitioner's pay has to be fixed at a higher amount, then necessary steps shall be taken by the respondent authorities to release pension to the petitioner by refixing the pay, strictly in accordance with the scale of pay which the petitioner is entitled to receive.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)