

Ct. 05
Item No.09
14.12.2021
(suvendu)

WPA 16295 of 2019

[Via Video Conference]

Sri Jyotish Chakraborty
Vs.
The State of West Bengal & Ors.

Mr. Narayan Chandra Mandal
Mr. Bhaskar Mandal
Mr. Chandan Chakraborty
.....for the petitioner

Mr. Joytosh Majumder
Ms. Tapati Samanta
.....for the respondent nos. 3 & 4

Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey
.....for the State

The petitioner has challenged an order of the Assistant Director, Directorate of Pension, Provident Fund and Group Insurance, dated 29th April, 2019 but signed on 27th May, 2019 and also seeks issuance of a revised Pension Payment Order based on the enhanced pay scale which the petitioner claims to be entitled to.

Learned Counsel appearing for the petitioner places a decision of 30th May, 2018 of the Director of Library Services which records that the petitioner is entitled to get a higher scale of pay on acquiring higher qualification in

accordance with a Memorandum dated 7th March, 1990. Counsel submits that the impugned decision by which the petitioner has asked to refund the overdrawn amount is contrary to the law laid down by the Supreme Court.

Learned counsel appearing for the respondent no. 4, being the District Library Officer, submits that the refund was on the basis of an erroneous calculation made by the said authority which would be evident from the case made out in the affidavit-in-opposition of the said respondent. Counsel also submits that the petitioner did not receive any amount towards revised scale of pay during his service tenure.

A decision passed by a learned Single Judge of this Court in W.P.No. 16172 (W) of 2019 (Sri Supriya Chakraborty Vs. The State of West Bengal & Ors.) is placed to show that on similar facts, the learned Judge directed the concerned authority to rectify the defects in the pension papers of the petitioner for issuing the revised Pension Payment Order and consequential benefits to the petitioner. Counsel also relies on The State of West Bengal & Ors. Vs. Smt. Ila Giri & Ors. reported in 2014 (3) CLJ (Cal) 271 where a Division Bench of this Court relying on Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors. reported in

(2009) 1 Supreme 163 refused to interfere with the impugned order on excess payment being made to the husband of the writ petitioner before the Court.

Upon hearing learned counsel and perusing the materials on record, it appears that although the petitioner was held to be entitled to revised scale of pay by the Director of Library Services on 30th May, 2018, the said authority requested the petitioner to contact the authority with regard to the compliance of certain audit observations made by the DPPG with regard to revised pension. The decision of the DPPG would appear from the impugned decision which refers to overdrawn amount. Since according to counsel for the respondent no. 4, the overdrawn amount was on account of an erroneous calculation and the petitioner was asked to contact the District Library Officer on account of such observation which the petitioner did not do, this Court is of the view that the petitioner should first be directed to approach the concerned authority for clarity in the matter and the basis of the refund sought for.

The decision of Ila Giri was passed before the judgment of the Supreme Court in Rafiq Masih was pronounced in 2015. The law with regard to recovery from retired or soon be retired employees

and the conditions when such recovery was impermissible in law has been set out in the last paragraph of the said judgement. Hence, Ila Giri may not entirely be relevant in the present case.

WPA 16295 of 2019 is accordingly disposed of with a direction on the petitioner to approach the District Library Officer in accordance with the communication dated 11th June, 2019 for reconciliation of the observation made by the DPPG. The petitioner shall be at liberty of approaching the authority within a week from date and the District Library Officer shall take necessary steps in the matter of revised pension within four weeks from the date on which the petitioner approaches the District Library Officer.

It is made clear that any decision of the District Library Officer or any other authority shall be made only upon hearing all concerned parties including the petitioner and upon considering all the relevant decisions passed by the Supreme Court and the High Courts in this regard including the relevant Memorandum and Notifications.

WPA 16295 of 2019 is disposed of in terms of the above.

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

(Moushumi Bhattacharya, J.)