14.06.2021
Sl. No.13
srm

WPA No.26014 of 2016

With
CAN 1 of 2018(Old No. CAN 923 of 2018)

Ram Krishna Roy
Vs.
State of West Bengal & Ors.

Mr. Ranajit Chatterjee,
Mr. Prasenjit De,
Mr. Aniruddha Mitra
...for the Petitioner.

Re : ***CAN 1 of 2018 (Old No. CAN 923 of 2018)***

This is an application for substitution upon the death of the sole petitioner, namely Ram Krishna Roy. The petitioner died in-testate on June 11, 2017 leaving behind his widow, Smt. Ruma Roy and daughter Smt. Shreyasi Roy as his heirs and legal representatives. Both of them are adults and *sui juris.*

Let Ruma Roy and Smr. Shreyasi Roy be substituted in place of the petitioner.

Office is directed to take appropriate steps.

The application bearing CAN 1 of 2018 (Old No. CAN 923 of 2018) is disposed of.

There will be however, no order as to costs.

Re : ***WPA No.26014 of 2016***

None appears on behalf of the State-respondents and the University despite service.

Mr. Amal Kumar Sen, learned Additional Government Pleader, with Mr. Lal Mohan Basu, learned

Advocate, who are engaged in the subsequent matters involving similar question of law, are requested to appear before this Court. Learned Legal Remembrancer is directed to regularise their appointment.

As the issue has already been decided by the Hon'ble Division Bench in respect of a similarly situated Group C staff of the concerned university, this Court does not find any reason not to take up the matter in the absence of the University and as Mr. Amal Kumar Sen is before the Court and is ready with the matter.

This writ petition has been filed challenging a portion of the order dated May 29, 2015 issued by the Registrar, Bidhan Chandra Krishi Viswa Vidyalaya, by which the over-drawn amount was directed to be adjusted from the retirement benefits of the petitioner. The petitioner joined as a Group C staff of the said university and retired on December 31, 2012. It is submitted that the order of deduction was illegal, contrary to law and also contrary to the decision of the Hon'ble Apex Court in the matter of State of Punjab & Ors. vs. Rafique Masih reported in (2015)4 SCC 334.

Mr. Chatterjee has also placed reliance on a Division Bench judgment of this Court dated February 5, 2021 in FMA No.1088 of 2017. The Hon'ble Division Bench has categorically held that in the absence of any allegation of fraud or misrepresentation or manipulation of service record at the instance of the petitioner therein, who was also a Group C employee of the said university, the respondents did not have any right or any authority to realise the amount paid in excess towards salary. The authorities were directed to refund the excess amount drawn but without interest.

The relevant portion of the order of the Hon'ble Division Bench is set out for convenience:

> "Earlier to ***Rafiq Masih*** (supra) in ***Syed Abdul Qadir Vs. State of Bihar*** reported in ***(2009) 3 SCC 475***, the Hon'ble Supreme Court considering the similar circumstances has stated clearly that except in cases where:
>
> (a) the excess amount was paid on account of any misrepresentation or fraud on the part of the employee.
> (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.
> (c) it is found that the employee had knowledge that the payment received was in excess of what was due or wrongly paid.
> (d) an error is detected or corrected within a short time of wrong payment.
>
> No overdrawal is to be deducted from the retirement benefits of the employee.
>
> The aforesaid principle was reiterated in ***B. Radhakrishnan Vs. State of Tamil Nadu & Ors.*** reported in ***(2015) 17 SCC 507 paragraphs 16 and 17*** which reads:-
>
> *"**16**. Applying the same principle to the facts of the case in hand, we notice that firstly, the respondents issued an order sanctioning stepping up of the pay scale of the appellants on the strength of the order of High Court. Secondly, while claiming this relief, the appellants neither committed any fault nor made any*

incorrect/false statement to secure the benefits because it was being claimed only on the basis of parity and lastly, the appellants rendered their services for the period in question.

***17**. In the light of these reasons and further keeping in view the short controversy involved in the case which is somewhat akin to the case of Shaym Babu (supra), we are of the view that similar directions, which were given in the case of Shaym Babu, can also be given in these appeals against the respondents. In other words, it shall only be just and proper not to recover any excess amount from the appellants, which has been paid to them on the basis of stepping up of their pay scale. It is much more so when as mentioned above, the appellants have given up their challenge to the respondent's main action taken against the appellants objecting for the grant of benefit of stepping up of their pay and confined their attack to the issue of recovery of excess amount from them."*

In the instant case, in absence of any allegation of fraud or misrepresentation or manipulation of service record or presence of any of the instances which would have disqualified the employee to get the benefit of overdrawal, we feel that the respondent authorities do not have any right or authority to realize the amount paid in excess towards salary. Looking at it from the equitable point of view it can be safely concluded that it would be inextricably inequitable and unjust if excess payment is now deducted from the retiral dues when the fact remains that the employee is not at fault at all. It is immaterial as to whether a Committee comes to a different conclusion that such mistakes had occurred in cases of many, however, we in such cases find that the employees concerned were responsible for such wrong fixation and it is not necessary for us to come into such conclusion since it is clear from the record that the petitioner has an unblemished service record and he has not contributed to such wrong fixation of pay scale. We feel that the case of the petitioner squarely comes within sub-paragraphs (2), (3) and (4) of Paragraph 18 of the ratio in **Rafiq Masih**

(supra) and the other judgments referred to in this order.
On such consideration, we set aside the order under appeal.
We allow the appeal and direct the respondent authorities to refund the same sum of Rs.458736/- within four weeks from date, however, without any interest."

Under such circumstances, as the petitioner is similarly situated with one Chittaranjan Patra in whose favour the Hon'ble Division Bench has passed the aforementioned order and having taken note of the proposition of law already laid down in this regard by the Hon'ble Apex Court as also by this Court, the writ petition is allowed to the extent that the amount as overdrawn that is Rs.1,16,284/- be refunded to the wife and daughter of the deceased employee in equal proportion but without interest by the respondent authorities within a period of eight weeks from the date of communication of this order.

The order dated May 29, 2015 is set aside and quashed to the extent of the direction of adjustment of the excess payment from the retirement benefits.

As the order of refund has already been passed in favour of the deceased petitioner, the question of violation of principles of natural justice as raised by Mr. Chatterjee does not survive.

The writ petition is, thus, disposed of.

There will be, however, no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)