

12.04.2022
SL No. 12
Court No. 24
(P.M)

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

WPA 1782 of 2022

**Pabitra Kumar Jana
Vs
The State of West Bengal & Ors.**

Mr. Sourav Mitra,
Ms. Sreyasree Choudhury
... for the petitioner .

Mr. Ranjan Saha
... for DPSC Paschim
Medinipur

The petitioner retired as the Assistant teacher of a primary school on attaining his age of superannuation on 31st October, 2020.

The retiral dues of the petitioner was not released in his favour allegedly on the ground that there was an overdrawal amount of Rs. 27,888/-. The petitioner was directed to refund the aforesaid amount which the petitioner did by way of a treasury challan on 13th April, 2021.

The petitioner submits that the direction to refund the alleged overdrawal amount after his retirement is illegal and he prays for refund of the said amount.

The instruction provided by the Chairman of the Paschim Medinipur, District

Primary School Council mentions that at the time of calculation of the pension of the teacher by the Joint Director of Accounts, it was noticed that an excess amount of Rs. 27,888/- was paid to the petitioner at the time of fixation of salary.

Accordingly, the petitioner was directed to refund the aforesaid excess amount.

I have heard learned counsel for the parties and considered the orders passed by the Hon'ble Supreme Court as well as this court on similar facts.

Following the principles laid down in the case of *Shyam Babu Verma-vs.-Union of India*, (1994) 3 SCC 521, *Syed Abdul Qadir -vs.- State of Bihar*, (2009) 3 SCC 475 and *State of Punjab-vs.-Rafiq Masih*, (2014) 8 SCC 883, (2015) 4 SCC 334, *Chandi Prasad Uniyal-vs.-State of Uttarakhand*, (2012) 8 SCC 417, *Syed Abdul Qadir (supra)* and in *Col. B. J. Akkaravs. -vs- Govt. of India*, (2006) 11 SCC 709, *Civil Appeal No. 3500 of 2006 (High Court of Punjab & Haryana-vs.-Jagdev Singh)* and the judgment delivered by Hon'ble Division Bench of this Court in *Asitosh Bhattacharya vs. The State of West Bengal* (2015)2 CLT 339 in my considered

opinion, no recovery could be made from the retiral benefits of the petitioner as there was no misrepresentation and/or fraud nor was the petitioner conscious that he was receiving more than what he was entitled to and accordingly directing the petitioner to refund the sum of Rs. 27,888/- was illegal.

The Hon'ble Supreme Court clearly laid down that recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service), recovery from retired employees, or employees who are due to retire within one year, of the order of recovery and recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued is impermissible.

In the present case the petitioner is a Group-3 class employee who enjoyed the alleged excess amount for more than five years before the order of recovery was issued and the order of recovery was issued after his retirement. The petitioner will accordingly be covered by the order passed by the Hon'ble Supreme Court.

In view of the above the concerned Treasury Officer is directed to refund the amount of Rs. 27,888/- to the petitioner along with interest at the rate of 5% per annum with effect from the date of issuance of PPO. Such payment is to be made to the petitioner within a period of eight weeks from the date of communication of this order.

The writ petition stands disposed of.

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

Instruction given by the Chairman of Paschim Medinipur District Primary School Council dated 5th April, 2022 be retained with the records.

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

(Amrita Sinha, J.)