12.04.2022
SL No. 14
Court No. 24
(P.M)

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 1786 of 2022

Chandan Kumar Shyamal
Vs
The State of West Bengal & Ors.

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

Mr. Ranjan Saha
... for DPSC Paschim Medinipur

Mr. Biswabrata Basu Mallick,
Mr. Sanjib Das
... for the State

The petitioner retired as the Assistant teacher of a primary school on attaining his age of superannuation on 31st August, 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. 1,07,033/-. The petitioner was directed to refund the aforesaid amount which the petitioner did by way of a treasury challan on 13th September, 2021.

The petitioner prays for refund of the said amount as the direction to refund any amount, allegedly overdrawn, from a retired employee is bad in law.

The instruction received by the Chairman of 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. 1,07,033/- 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 to refund the sum of Rs. 1,07,033/- was illegal.

The Hon'ble Supreme Court 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-C employee who alleged received the excess amount for than five years prior to passing the order for refund and the direction to refund was issued after the petitioner retired from service. The same is impermissible in view of the law laid down by the Hon'ble Supreme Court.

The concerned Treasury Officer is accordingly directed to refund the amount of Rs. 1,07,033/- 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 respondent authorities are directed to fix the scale of pay of the petitioner strictly in accordance with law and make payment of his terminal benefits in accordance with his proper scale of pay.

The writ petition stands disposed of.

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.)