

Item No.54
Ct. No.24
12.04.2022
TN

WPA No. 4874 of 2022

Syed Abdus Samad
Vs.
The State of West Bengal and others

Mr. Debashis Banerjee
.... for the petitioner

Mrs. Sudipa Roy,
Mr. Srinath Singha Roy
.... for the State

The petitioner is a retired teacher of a primary school. He attained his normal age of superannuation on 29th February, 2020. His allegation is that he is not being paid his terminal benefit.

The petitioner came to learn from a communication dated 21st January, 2022 by the District Inspector of Schools, Primary Education, Bankura to the Sub-Inspector of Schools, Kotulpur West Circle, Bankura that on account of non-payment of the amount overdrawn by him, his pension cannot be disbursed.

The petitioner submits that after service of a copy of the writ petition in the office of the Council, a communication was made from the Secretary, District Primary School Council, Bankura on 28th March, 2022, whereby the petitioner has been asked to refund the overdrawn salary with effect from January, 2009 to February, 2020 amounting to Rs.91,632/- only.

Learned advocate for the petitioner submits that no intimation with regard to the overdrawal amount was made to the petitioner during his service tenure. More than two years after his superannuation, he has been intimated that there was an overdrawn amount of Rs.91,632/- only and the petitioner has been directed to refund the same.

Learned Advocate representing the State-respondent submits that as long as the money which has been overdrawn by the petitioner, is not refunded, the petitioner will not be entitled to receive his pension and other terminal benefits.

Law in this regard has already been settled by several pronouncements of the Hon'ble Supreme Court.

The Hon'ble Supreme Court in the matter of State of Punjab vs Rafiq Masih (White Washer) reported in (2015) 4 SCC 334 clearly held that

withdrawal is impermissible from employees who had retired and if the amount was enjoyed by the employee for a continuous period in excess of five years before the order of recovery is issued. Recovery from employees belonging to Group-C and Group-D service is also impermissible.

In the present case, the petitioner enjoyed the alleged amount from the year July, 2009 till he retired in the year 2021. He is a Group-C employee and the intimation to refund was given more than two years after his superannuation. Hence, recovery from the petitioner is impermissible in law.

In view of the above, the impugned communication, directing the petitioner to refund the sum of Rs.91,632/-, cannot be sustained in the eye of law. The aforesaid communication is accordingly set aside.

The District Primary School Council, Bankura and the District Inspector of Schools, Primary Education, Bankura are directed to take steps for processing the pension file of the petitioner strictly in accordance with law, at the earliest.

The aforesaid respondent shall ensure that till a decision is taken with regard to final payment of the pension of the petitioner, provisional pension amount shall be paid to the petitioner positively within a

period of five weeks from the date of communication of this order. All endeavour shall be taken by the respondent authorities to ensure that the petitioner receives his pension in accordance with his proper scale of pay latest within a period of seven months from the date of communication of this order.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

(Amrita Sinha, J.)