9.3.2022 **WPA 5107 of 2018**

Ct.15,sl.88 **Pabitra Mukherjee**

Vs

Sk **The State of West Bengal & Ors.**

Mr. Subir Kumar Bhattacharyya
...for the petitioner.

Mr. Amal Kumar Sen
Mr. Sabyasachi Mondal
....for the C.S.T.C.

The writ petition relates to release of retiral benefits in favour of the petitioner who was Peon of the Calcutta State Transport Corporation being the principal respondent and retired on superannuation on 30th November, 2016.

Mr. Bhattacharyya, learned advocate appears on behalf of the petitioner and submits that on retirement only provident fund was released in his favour and other retiral benefits were not allowed to him which prompted him to file this writ petition. In addition thereto one letter dated 27th November, 2017 issued by the Assistant Manager (Administration and Accounts) Central Administration is also put under challenge by the petitioner whereby an amount of Rs. 1,98,122/- was found to be excess drawn by the petitioner as a result whereof such sum was deducted from the gratuity of the petitioner.

Petitioner has prayed for release of such alleged overdrawn amount which was wrongfully deducted from the gratuity of the petitioner.

Mr. Amal Kumar Sen, learned Additional Government Pleader appears on behalf of the Corporation and placing reliance upon paragraph 6 of the report filed on behalf of the Corporation in the form of affidavit affirmed on 16th July, 2018 has submitted that the petitioner was initially appointed as Driver with effect from 3rd October, 1981 and his scale was accordingly fixed and benefit under Carrier Advancement Scheme, 1990 was also extended to the petitioner. Subsequently, he was re-designated as Peon vide order dated 15th June, 2005 and he was placed in the scale of pay of Rs. 2600 to Rs. 4175/-. Such re-designation was made with effect from 1st January, 2006 thereby he was entitled to draw pay in the scale commensurating to the post of Peon. However, he was inadvertently allowed to draw his monthly salary in the scale which is applicable to a Driver which resulted in excess payment to him at the material point of time.

It has further been submitted on behalf of the Corporation that all the benefits which were payable to the petitioner to the extent of Contributory Provident Fund, Gratuity, Leave Salary and ROPA arrears were released in favour of the petitioner excepting the amount of Rs. 1,98,122/- which was deducted from the gratuity of the petitioner on the ground of excess payment.

This Court has heard the learned advocates representing the parties and also perused the relevant documents available on record. Petitioner retired on superannuation on 30th November, 2016 and subsequently while processing pension case of the petitioner Assistant Manager (Administration and Accounts), Central Administration suddenly found that the petitioner was paid in excess which resulted in deduction of Rs. 1,98,122/- from the gratuity of the petitioner. Question arises whether the respondent authority can be permitted to deduct such amount from the gratuity of the petitioner while releasing the retiral dues in his favour after his superannuation on 30th November, 2016.

On placing reliance on paragraph 18 of the judgement reported in 2015, Volume 4, SCC page 334 [State of Punjab and Others Vs Rafiq Masih (White Washer) & Ors.], this Court is of the view that such recovery from the gratuity of the petitioner after his retirement on account of excess payment which was made with effect from 1st January, 2006 is not permissible.

However, Mr. Sen, has made an attempt to defend the decision of Assistant Manager (Administration and Accounts), Central Administration dated 27th November, 2017 by placing reliance upon the judgment of the Apex Court reported in 2016, Volume 14, SCC page 267 (High Court of Punjab & Haryana & Ors. Vs Jagdev Singh), wherein in paragraph 11 it has been succinctly held by the Apex Court that if the employee concerned is placed on notice that any payment found to have been made in excess the same would be required to be refunded since the officer furnished an undertaking while obtaining the revised scale of pay, therefore, he is bound by such undertaking. But in the present case neither the writ petitioner was intimated about such excess amount being drawn by him prior to his retirement nor he furnished any undertaking that in the event he draws excess amount that is to be refunded. Therefore, the ratio of Jagdev Singh (supra) does not have any applicability in the present case. Rather it appears that law decided by the Supreme Court in the case of Rafiq Masih (supra) is squarely applicable, since the petitioner was working as Class IV employee in the Corporation and thereafter retired as such demand to deduct the sum from the gratuity on account of excess payment cannot be countenanced.

Accordingly, the concerned authority of Calcutta State Transport Corporation is directed to refund Rs. 1,98,122/- to the petitioner within a period of four weeks from date of communication of this order along with 8% interest from 1st December, 2016 till the date of payment.

With the above direction, the writ petition stands disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(**Saugata Bhattacharyya, J.)**