02. 21.09.2022
bd. Ct.15

W.P.A. 5660 of 2019

Smt. Sabita Ghosh Biswas

-vs-

State of West Bengal & Ors.

Mr. Dilip Kumar Samanta
... for the petitioner.

Mr. Tulsidas Ray
... for the State

Affidavit of service filed by the petitioner in Court today pursuant to the previous order dated 2nd September, 2022 is taken on record.

The grievance of the petitioner is deduction of Rs. 1,32,535/- from the gratuity of the petitioner at the time of releasing retiral dues on issuing pension payment order under memo dated 12th December, 2018 after superannuation of the petitioner on 30th June, 2016. Petitioner was working in the post of Assistant Teacher in a Government aided recognised high school. While releasing retiral dues it was found by the State respondents that basic pay of the petitioner was required to be fixed at Rs.8,000/- with effect from 1st April, 1999 in stead of Rs. 8225/- and consequently last pay at the time of superannuation was required to be reckoned as Rs.29520/- in stead of Rs.30160/-. Accordingly, the State respondents by issuing memo dated 31st October, 2018 calculated Rs.1,32,535/- as overdrawn amount in respect of service rendered by the petitioner till the date of superannuation on 30th June, 2016 and consequently while issuing pension payment order under memo dated 12th December, 2018 the said amount of Rs. 1,32,535/- was deducted from the gratuity of the petitioner.

The petitioner being aggrieved by such decision to recover Rs. 1,32,535/- from the gratuity of the petitioner as it emanates from memo dated 31st October, 2018 issued by the District Inspector of Schools (SE), Siliguri, as well as the pension payment order issued under memo dated 12th December, 2018 preferred this writ petition pursuant to the leave granted by a coordinate Bench while disposing of the previous writ petition being W.P.4822 (W) of 2009. In the said order the coordinate Bench granted leave to the petitioner to challenge the pension payment order and to claim interest on delayed payment of salary and retiral benefits.

Mr. Tulsiday Ray, learned advocate, appears on behalf of the State Respondents has defended the decision of the respondent authorities in deducting the alleged excess drawn amount from the gratuity of the petitioner.

This Court has heard the learned advocates representing the parties and has perused the memo dated 31st October, 2018 and the pension payment order dated 12th December, 2018 whereby the alleged excess drawn amount was deducted from the gratuity of the petitioner.

On perusal of the decision of the concerned District Inspector of Schools dated 31st October, 2018 it appears that in terms of Government Order No. 185/SE-B dated 4th May, 2000 amending relevant clauses of ROPA 1998 basic pay of the petitioner was required to be refixed and consequently the last pay was also required to be altered. Due to such findings of the concerned District Inspector of Schools it was found by the authority that there was requirement to recover excess drawn amount. Further considering the facts of the case it appears that petitioner retired on superannuation on 30th June, 2016 and the decision was taken by the concerned District Inspector of Schools on 31st October, 2018, more than two years after the superannuation of the petitioner wherein decision was taken to refix the basic pay of the petitioner with effect from 1st April, 1999.

It is not the case of the State respondents that by way of mis-representation or fraud petitioner during her tenure managed to get the benefit of fixation of basic pay which she was not entitled. The respondent authorities had enough time to refix the basic pay of the petitioner with effect from 1st April, 1999 well before the superannuation of the petitioner which was not done. In this regard reliance is placed on the judgment of the Hon'ble Supreme Court reported in ***(2015) 4 SCC 334 (State of Punjab & Ors. –vs- Rafiq Masih (White Washer)*** and Ors, paragraph 18 as well as recent unreported judgment of the Hon'ble Supreme Court passed in ***Civil Appeal No. 7115 of 2010 (Thomas Daniel-vs- State of Kerala & Ors.)*** dated 2nd May, 2022. In these two judgments the Hon'ble Supreme Court has succinctly decided that after superannuation the employer cannot deduct excess drawn amount if the same is not drawn by the employee during the tenure by fraud or mis-representation. Wrong fixation of basic pay and wrong consideration of last pay drawn at the time of superannuation can not be a ground for deduction of alleged excess drawn amount from the retiral dues of the employee concerned.

Accordingly, the concerned respondent authorities are directed to refund the deducted amount i.e., Rs.1,32,535/- to the petitioner along with 7% interest from the date of deduction till the date of refunding the said amount within a period of six weeks from the date of communication of this order.

However, it is made clear that respondent authorities shall be at liberty to release the retiral dues based on the last pay drawn by the petitioner as calculated by the concerned District Inspector of Schools which emanates from the memo dated 31st October, 2018, if the same is not done till date. The respondent authorities shall also be at liberty to issue revised pension payment order for fixation of appropriate amount to be reckoned as last pay drawn as indicated in the said memo dated 31st October, 2018.

With the aforesaid direction the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)