Item No. 67

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

25.07.2022
Ct-24

WPA 6646 of 2022
Subhas Dhar
v.
The State of West Bengal & Ors.

Mr. Arjun Mukherjee
Mr. Sk. Kiran
... for the petitioner.

Mr. Lalit Mohan Mahata
Mr. Prasanta Behari Mahata
... for the State.

Mr. Prabal Sarkar
... for the Municipality.

The petitioner is a retired employee of the Murshidadbad Municipality. He retired from service after attaining the normal age of superannuation on February 28, 2019.

He alleges that immediately prior to his retirement the Municipality forced him to sign an undertaking that he will refund the amount which was allegedly overdrawn by him during his service tenure. According to the petitioner he is not aware of any amount that has been overdrawn by him. No notice was ever served upon him directing to refund the alleged overdrawn amount.

The e-Pension Payment Order that has been issued in favour of the petitioner on November 9, 2021 mentions that the gross retiring gratuity of the petitioner is Rs. 7,30,000/- and the deduction due to salary overdrawal is Rs. 4,49,498/-. The net retiring gratuity was calculated at Rs. 2,80,502/-.

The petitioner submits that the reduced amount of gratuity has also not been disbursed in his favour till date.

The petitioner relies upon an unreported judgment dated January 30, 2019 passed by a Co-ordinate Bench of this Court in ***WP 24231(W) of 2017*** in the matter of ***Niladri Kumar Choudhury v. State of West Bengal & Ors.,*** wherein the Court relied upon the judgment passed by the Hon'ble Supreme Court in this regard.

The Hon'ble Supreme Court in the matter of ***State of Punjab v. Rafiq Masih,*** reported in ***(2015) 4 SCC 334*** clearly laid down the situations where deduction is impermissible by the employers. The same mentions that recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is passed is impermissible.

In the present case, no notice was given to the petitioner prior to his retirement regarding deduction of the alleged overdrawn amount and the petitioner enjoyed the alleged excess payment till the date of his retirement.

In view of the above, the decision of the Municipality to deduct the alleged overdrawn amount from the gratuity amount of the petitioner is impermissible and bad in law. The petitioner will be entitled to the entire gratuity amount of Rs. 7,30,000/-. Accordingly, the e-Pension Payment Order issued in favour of the petitioner is liable to be rectified.

The Director, Directorate of Pension, Provident Fund & Group Insurance being the respondent no. 3 herein is directed to issue rectified e-Pension Payment Order in favour of the petitioner at the earliest, but positively within a period of sixty days from the date of communication of a copy of this order.

The respondent Municipality shall ensure that the retirement dues of the petitioner are disbursed positively within a period of three months from the date of issuance of the rectified e-Pension Payment 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.

Sh **(Amrita Sinha, J.)**