

S/L 47
26.04.2022
Court No.24
SD

WPA 9259 of 2021

Basana Rani Roy Sarkar
Vs.
The State of West Bengal & Ors.

Ms. Sabita Khutia (Bhunya)

...for the Petitioner.

Mr. Parikshit Goswami

...for the State.

The petitioner was a primary school teacher who retired from service on attaining her normal age of superannuation on April 30, 2017.

The petitioner has averred in her writ petition that, before her retirement she was intimated by the Chairman, District Primary School Council, Malda that the school authority was unable to forward her pension file to the pension sanctioning authority as there was a sum of Rs.48,298/- overdrawn by the petitioner during her service period.

On getting such information, the petitioner deposited the overdrawn amount of Rs.48,298/- by way of treasury challan on October 28, 2016.

The petitioner submits that the direction upon the petitioner to refund the amount which was overdrawn by her was impermissible in law. It has been submitted that the alleged amount was overdrawn by her on account of wrong fixation of salary and the petitioner did not have any role to play in the matter of fixation of her salary.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of *State of Punjab and Others vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334 wherein the Court laid down instances whether recoveries of employers would be impermissible in law.

Learned advocate for the State received instruction from the District Inspector of Schools, Primary Education, Malda wherefrom it appears that due to inadvertence, the pay of the petitioner was wrongly fixed. On account of such erroneous fixation, the petitioner overdrew an amount of Rs.1,04,298/- only. The error was detected prior to her retirement and the petitioner was informed accordingly. The petitioner herself applied to the Chairman with a request to deduct from her monthly salary, a sum of Rs.56,000/- only at the rate of Rs.8,000/- per month for a period of seven months, that is, from August 1, 2016 till April 30, 2017 that is the date of her retirement. The balance amount of Rs.48,298/- was deposited by her voluntarily, through treasury challan.

It appears from the averments made in the writ petition that the writ petitioner did not mention anything as regards to her undertaking to deposit the amount which was wrongly credited to her.

On the contrary, she filed a written representation before the Secretary/Chairman of the Council on September 29, 2016 wherein she undertook to refund the entire amount

of Rs.1,04,298/- only. A portion of the amount which was overdrawn by her was deducted on monthly basis from her salary and the balance portion was refunded by her by way of treasury challan.

It is settled law that the employee cannot get the benefit of a wrong fixation of pay. The fact of wrong fixation of pay was brought to the knowledge of the petitioner and the petitioner accepted the said error voluntarily and refunded the amount which was overdrawn by her, that is, the amount which she was not entitled to receive. The petitioner has not challenged the adjustment of the overdrawn amount from her monthly salary for seven long months. She has only prayed for refund of the amount which was paid by her through the treasury challan in the year 2016.

The petitioner retired in April 2017 and filed the writ petition in March 2021 that is nearly four years after her retirement.

As it appears that the petitioner was not entitled to receive the amount which was paid to her, she voluntarily agreed to refund the same. There is no error on the part of the respondent authorities. Accordingly, the prayer for refund of the petitioner cannot be accepted.

The writ petition fails and is hereby dismissed.

The instruction given by the District Inspector of Schools, Primary Education, Malda dated September 3, 2021 is retained with the records.

Urgent certified photocopy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Amrita Sinha, J.)