

04.07.2022
Item No. 33
Crt.No.11
b.r.

MAT 750 of 2022
with
IA No. CAN 1 of 2022
With
CAN 2 of 2022

***West Bengal State Minor
Irrigation Corporation Ltd. & Ors.***
Vs.
Prodosh Kumar Kundu & Ors.

Ms. Sonal Sinha
Ms. Jaweria Rubana
..... for the appellants.

Mr. Manas Kumar Ghosh
Ms. Susmita Dey (Basu)
.....For the Respondent/writ petitioner.

Mr. Suman Dey
..... For the State.

Party/parties is/are represented in the order of
their name/names as printed above in the cause title.

Ms. Sinha, Learned Counsel appearing for the
appellants moves an application being CAN 1 of 2022
praying for condonation of delay of 160 days.

Upon perusal of the grounds contained in the said
application this Court finds that sufficient grounds have
been made out, therein and the same is allowed.

Accordingly, **I.A. No. CAN 1 of 2022** is **disposed**
of.

The application for stay being CAN 2 of 2022 and
the appeal being MAT 750 of 2022 are taken up for
hearing.

The appeal arises out of an order dated December 12, 2019 whereby The Hon'ble Single Bench of this Court quashed/set aside the impugned order seeking recovery of the overdrawn amount from the petitioner/a retired Class-II employee of the Appellant/West Bengal State Minor Irrigation Corporation Limited (for short 'the Company') *vide* Memo No. MIC/Accts-Gratuity/175/2017/377/1(4) dated July 25, 2019 hereinafter referred to as the 'impugned Memo').

The learned Single Judge relying on a decision of The Hon'ble Supreme Court, *State of Punjab & Ors -vs- Rafiq Masih (White Washer) & Ors. (2015) 4 SCC 334* held that the impugned Memo by which overdrawn amount was sought to be recovered from the petitioner was liable to be set aside and the amount was to be refunded. The appellant/Company was also directed to pay the gratuity and leave salary to the writ petitioner/respondent calculated on the basis of his correct pay scale which the petitioner was entitled to in accordance with law.

Furthermore, the retiral dues which were disbursed to the petitioner belatedly, was also to carry interest on account of delayed payment from the date of its accrual till the date of actual payment.

Ms. Sinha appearing on behalf of the appellants argues that *vide* Clause-2 of Memo No. MIC/Estab/290/Part-II/2010/1805 dated July 7, 2010,

the Managing Director clearly notified the employees of 'the Company' that the fixation of Pay under the modified Career Advancement Scheme was provisional and the overdrawn amount could be recovered. Therefore, the employees who got the benefit under the scheme and overdrawn any amount pursuant to the same, were aware that the Rule was provisional and the amount could be recovered from them.

Hence, the employee/employees did not have any vested right over any overdrawn amount that may have been paid.

She further submits that the learned Single Judge based her decision primarily on the case of *Rafiq Masih (supra)*. She submits that the reliance was wrongly placed as the said case was inapplicable to the facts and circumstances of the instant case. She says that the benefit given to the petitioner/respondent was provisional and the petitioner knowing fully well accepted the same.

Mr. Ghosh, Learned Counsel appearing for the writ petitioner/respondent argues that he is squarely covered by the ratio in the case of *Rafiq Masih (supra)*. He refers to the impugned Memo dated July 25, 2019 whereby the respondents sought to recover the benefits which were previously granted to him under the modified career advancement scheme two years after his retirement on June 30, 2017. He submits that the gratuity amount was

not paid to him. The post retirement benefits were also granted at the belated stage (after 2 years). The Company sought to recover the purported overdrawn amount of Rs. 2,45,976/- from the petitioner after 2 years of his retirement. Belated disbursement of the post retirement dues and that to after deduction of the purported overdrawn amount caused extreme hardship to the petitioner.

He places reliance on *Sahib Ram -vs- State of Haryana & Ors. reported in 1995 Supp.(1) SCC 18* to show that the amount which was already paid to the petitioner should not be withdrawn from him, since the same was not granted on account of any misrepresentation made by the petitioner. Therefore, the petitioner was entitled to the benefit of higher scale of pay, which may have been granted to him.

Reliance is also placed by both the parties in the case of *Chandi Prasad Uniyal & Ors -vs- State of Uttarakhand & Ors. reported in MANU/SC/0655/2012 = AIR 2012 SC 2951*. Paragraph-16 of the said judgement clearly states that the “amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right

Having considered the rival submissions of the parties and the materials on record, this Court is of the

considered view that the petitioner being a retired employee whose service have been superannuated in June 2017 and the post retirement benefits been withheld for two years has already suffered 'extreme hardship'. The petitioner's situation was exacerbated by the fact that his gratuity amount was also not paid. Furthermore, a substantial sum was also deducted by the impugned memo on the ground that it was overdrawn.

This Court is of the view that the said amount was not paid to the employee because of any misrepresentation made by him but due to the policy of 'the Company'. Equity, in exercise of judicial discretion demands that said amount should not be recovered from the petitioner since that will lead to extreme hardship, if such a recovery is implemented.

There is no reason to interfere with the judgement and order dated December 12, 2019 passed by the Hon'ble Single Bench of this Court.

Since no affidavits have been called for, the allegations made in the appeal and application are deemed not to have been admitted by the petitioner/respondent.

The appeal being **MAT 750 of 2022** along with the connected application being **CAN 2 of 2022** stand thus **disposed of** without any order as to costs.

Written Notes of Argument filed by the appellants be kept with the record.

All parties to act in terms of a copy of the order 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 of all necessary formalities.

(Lapita Banerji, J.)

(Subrata Talukdar, J.)