

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 18401 of 2021

Niharkana Das
Vs
The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Sourav Mitra, Adv. Mr. Bansi Badan Maity, Adv.
For the State	:-	Mr. Amal Kumar Sen, Adv. Mr. Swapan Kumar Pal, Adv.
Heard on	:-	17.02.2022
Judgment on	:-	25.02.2022

Amrita Sinha, J.:-

The husband of the petitioner was a primary school teacher. He retired on attaining his normal age of superannuation on 28th February, 1992 and expired on 26th December, 1993. Pension Payment Order which was issued in his favour on 19th June, 2001 shows that an amount of Rs. 50,627/- was deducted from the retiral dues of her deceased husband on the ground of overdrawal payment. The petitioner is aggrieved by the same.

The petitioner alleges that prior to such deduction no opportunity was given to the petitioner to defend herself. The respondent authority *suo motu* took the decision to deduct the aforesaid amount. After the relationship between the employer and employee ceases the employer cannot recover any amount from the employees.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of State of Punjab & Ors. –vs- Rafiq Masih (White Washer) & Ors. reported in (2015) 4 SCC 334 wherein the Court laid down instances when recovery from employees is impermissible.

The petitioner prays for refund of the amount which has been illegally deducted from the retiral dues of her husband, along with interest.

The Assistant Inspector of Schools attached to the office of the District Inspector of Schools (P.E.), North 24-Parganas has filed an affidavit before this Court. In the said affidavit it has been alleged that the writ petition has been filed on suppression of material facts.

It has been stated that the petitioner's husband Narayan Chandra Das was the head teacher of East Korakati Junior Basic School. He opted for the revised scale of pay introduced with effect from 1st January, 1986. Thereafter, in terms of the G.O. No. 196-Edn(B) dated 27th April, 1992 the petitioner changed his mind and exercised option to withdraw the earlier option filed by him and expressed his desire to revert to the pre-1986 scale of pay with a view to enjoy the benefit of the extension of service on a year to year basis, subject to the condition that he will refund to the Government the excess amount, if any, drawn by him consequent upon fixation of his pay in the revised scale with effect from 1st January, 1986.

The husband of the petitioner withdrew his option in the prescribed format and undertook to refund the excess amount drawn by him.

The husband of the petitioner completed his service tenure on attaining sixty years of age on 29th February, 1992. He applied for retention in service and the authority granted extension for the first term from 1st March, 1992 to 28th February, 1993. The second term extension was also granted in his favour from 1st March, 1993 to 28th February, 1994 on condition that he would receive salary during the extended period in the scale prevalent prior to issue of the G.O. No. 38-Edn(B) dated 7th March, 1990. Unfortunately, in the midst of the second term the teacher died on 26th December, 1993.

Under such circumstances, the petitioner, being the widow of the deceased teacher, submitted a declaration on 30th August, 1996 to refund the money received by her husband in excess and also opined to take pension and

gratuity in the 1981 scale of pay upon refunding the amount which was overdrawn by her husband. Copy of the declaration filed by the petitioner in the office of the respondent authority has been annexed to the affidavit in opposition.

Relying upon the declaration given by the petitioner, the Chairman, District Primary School Council, North 24-Parganas directed the Sub-Inspector of Schools, Sandeshkhali Circle to calculate and submit the overdrawn statement of salary of the teacher which was required to be adjusted from his retirement benefit considering the retirement of the deceased teacher at the age of sixty years.

The petitioner, as per the overdrawn statement, refunded the excess amount drawn by her husband. Family pension of the petitioner was issued by the DPPG on 19th June, 2001 after adjustment of the excess amount from the retirement benefit of the deceased teacher.

It has been submitted that the petitioner has approached this Court nearly twenty nine years after the retirement of the teacher and nearly twenty years after the issuance of the Pension Payment Order.

The judgment delivered by the Hon'ble Supreme Court in the matter of Rafiq Masih (surpa) will not be applicable in the present case as the money was deducted according to the declaration given by the teacher concerned during his service tenure.

Prayer has been made for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of both the parties.

Admittedly, in the instant case the teacher expired during his second extension in the year 1993. The teacher, while in service, exercised option to receive pay in a particular scale and later withdrew the said option, with a declaration, that he would refund the excess amount drawn by him. After his

death his widow merely reiterated the declaration which was submitted by the teacher while he was alive.

It is upon the expressed undertaking given by the teacher and subsequently by his widow that the money was deducted and Pension Payment Order was issued upon adjustment of the excess payment made to the teacher.

The petitioner received the payment way back in 2001 without any objection primarily because the adjustment, by way of deduction, was made after obtaining her consent and with her knowledge. It cannot be said that the deduction was made either unilaterally or *suo motu*.

Extension was given to the teacher after retirement only because he was agreeable to refund the excess amount so that he could remain in service for a longer period. The teacher never raised any objection to refund the amount drawn in excess by him. The widow, after a lapse of twenty years cannot be permitted to dig up the issue relying upon the judgment of the Hon'ble Supreme Court in the matter of Rafiq Masih (*supra*).

The judgment delivered by this Court in the matter of Kalyan Kumar Chattopadhyay –vs- The State of West Bengal & Ors. reported in (2006) 1 WBLR (Cal) 591 will also not come to the aid of the petitioner. The said judgment is distinguishable on facts. In Kalyan Kumar Chattopadhyaya (*supra*) the petitioner approached this Court immediately after the deduction was made and there was an allegation of wrong fixation of pay.

In the present case, the petitioner has approached this Court after a hiatus of twenty years of issuance of the Pension Payment Order and after twenty-nine years of retirement of the teacher. There is no wrong fixation of pay in the present case. The pay of the teacher was fixed in accordance with the option exercised by him and thereafter the pay was revised upon the withdrawal of option by the teacher himself, that too, after filing the declaration that he would refund the excess amount drawn by him.

The unreported judgment dated 18th January, 2017 relied upon by the petitioner in the matter of Shiva Rani Maity –vs- The State of West Bengal (WP 29979 (W) 2016) is also distinguishable on facts and will not apply in the present case.

In Shiva Rani Maity (supra) excess payment was made on account of erroneous fixation of pay. In the present case, pay was fixed as per the desire and option exercised by the teacher and there has been no error on the part of the respondent authority in adjusting the excess payment by deducting the same from the terminal dues as the teacher died in harness during his extended period of service. Had the teacher been in service, then the excess payment could have been adjusted from the pay of the teacher. Since the teacher died in harness, the authorities were left with no other option but to adjust the excess payment from the terminal dues of the teacher.

The judgment relied upon by the petitioner in the matter of Raj Kumar Jana –vs- The State of West Bengal & Ors. reported in 2018 (3) CLJ (Cal) 58 is also distinguishable on facts.

In Raj Kumar Jana (supra) the issue related to revision of pay as per ROPA. The Court observed that the contractual relationship between the parties terminated on retirement and the respondents were no longer empowered to change the concluded terms of contract unilaterally and without any sanction of law. In the instant case, the respondent authority acted in accordance with the option and desire expressed by the teacher. It implies that the authority acted in conformity with the contract entered in between the employer and employee, with the full knowledge and as per the instruction of the employee teacher. It cannot be said that the authority acted unilaterally or without the knowledge of the teacher. The teacher himself agreed to refund the excess amount and the authority acted as per the instruction of the teacher. There was no challenge to the Government Order relying on which the teacher exercised option to revert back to the old scale upon refund of the excess amount. The contract between the parties concluded long back and the same

was duly acted upon by the parties. After nearly three decades of retirement of the teacher, the widow ought not to be permitted to reopen the claim all over again relying upon judgments delivered by the Hon'ble Courts at a later point of time. The same will amount to dislodging several incidents which have, by now, been settled and put to rest by the conduct of the parties.

The widow hardly has a legal right to reopen or challenge the contract which was executed between her husband and his employer. The widow was not a privy to the contract entered in between her husband and his employer. A third person, not a party to the contract, be permitted to reopen a concluded contract entered in between the employer and the employee.

Moreover, prospective rulings of Court cannot be relied upon to reopen a contract which stood concluded and attained finality ages ago, otherwise, there will never be conclusivity of contract and a contracting party or his heir will devise means to reopen the same if it later turns out to be advantageous.

In view of the above, the Court is not inclined to interfere in the present case. The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)