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as

F.M.A.3156 of 2015
With
CAN 1 of 2015 (Old CAN No.7072 of 2015)

(Via Video Conference)

Smt. Sipra Mukherjee
Vs.
The State of West Bengal & Ors.

Mr. Tarapada Das,
Mr. Chandan Dutta.

...for the Appellant.

Mr. Biswabrata Basu Mallick,
Mr. Sanjib Das.

...for the State.

The only grievance which is raised in the instant mandamus appeal against the order dated 24th June, 2015 passed by the Single Judge in W.P.No.9501 (W) of 2010 is that the Single Bench did not award the interest on the overdrawal.

According to the learned Advocate for the appellant, the relief claimed in the writ petition pertains to the disbursement of the overdrawal amount from the retiral benefit together with interest.

Despite several services, there is no representation on behalf of the State, even office of the Government Pleader received the application on 20th December, 2021 but there is no representation on behalf of the respondents.

It is not in dispute that the husband of the petitioner who was a government employee superannuated in the year 2005 and the Pension Payment Order was issued on 27th August, 2007. It is indicated therein that the husband of the petitioner received a sum of Rs.43,477/- in excess to what he is entitled to. In other words, it is indicated that the husband had overdrawn the aforesaid amount and, therefore, the said amount is liable to be adjusted against the retiral benefits/pensionary benefits.

The said government employee, the husband of the petitioner died on 23rd June, 2009 and the writ petition was taken out by the petitioner on 4th May, 2010 seeking a relief against such adjustment of the alleged overdrawal. While disposing of the writ petition, it was fairly submitted by the Counsel appearing for the State that there was a mistake in adjustment/deduction of the said sum from the retiral benefits. Therefore, the action of the authority cannot be supported. The Single Bench further noticed such mistake and directed disbursement of the said sum of Rs.43,477/- to the petitioner.

The mistake on the part of an employer is evident and if any loss is suffered, the employer is liable to recompenset such loss. It was found that the aforesaid amount was withheld mistakenly which implies that the rightful claimant was deprived of such amount and prevented from enjoying usufructs therefrom. Had such amount been invested, it would have augmented some income and, therefore, the authority cannot escape from his onerous liability under a garb of the mistake having committed.

The order impugned is modified to the extent that the concerned respondent being the respondent no.7 shall disburse the amount of Rs.43,477/- to the petitioner along with an interest at the rate of 6% per annum calculated from 27th August, 2007 till the actual date of disbursement, if not already disbursed to the petitioner.

Accordingly, the appeal and the connected application are disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)