IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 20231 of 2022
Rafik Sekh
Vs
The State of West Bengal & Ors.

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Mr. Narayan Chandra Mondal, Adv.
Mr. Chandan Chakraborty, Adv.
Ms. Shraddha Satpati,Adv.

..... for the Petitioner

Mr. Sirsanya Bandopadhyay,Adv.
Ms. Tapati Samanta,Adv.

..... for the Respondents

Heard On : 09.11.2022

Judgment on : 02.12.2022

Rabindranath Samanta, J:-

1. Challenge in this writ petition is against the Order of deduction of Rs. 1,73,718/- as over drawn from the retiral benefits of the petitioner.
2. The petitioner states that he was appointed as Librarian of Shibnath Shastri Pathagar, P.O.- Joynagar Majilpur, South 24-Parganas on 21st September, 1984. His appointment was approved by the District Social Education Officer, South 24-Parganas. He retired from service on superannuation on 30th June, 2020, but his retiral benefits were not released by the respondent authorities in time.
3. The respondent authorities issued Pension Payment Order on 5th August, 2021. By the Pension Payment Order the respondent

authorities deducted a sum of Rs. 1,73,718/- from his retiral benefits on the ground that he had overdrawn this amount while he was in service. The petitioner submits that the respondent authorities cannot deduct such amount after his retirement.

4. The petitioner submits that he is entitled to get back the aforesaid deducted amount with 12% compound interest. On such grounds, the petitioner seeks direction upon the respondent authorities to release or refund the deducted amount with 12% compound interest thereon to him immediately.

5. The respondent No. 3, the Director of Library Services and the respondent No.4, the District Library Officer in their affidavit-in-opposition admit that the petitioner was appointed as Librarian under the Directorate of Library Services, Government of West Bengal on 21st September, 1984 at the scale of pay of Rs.1040-1920. The petitioner exercised option on 1st September, 1986. The petitioner obtained bachelor degree in Library and Information Science on 14th August, 1991. By an Order dated 6th June, 2016 passed by this Court in W.P No. 9065 (W) of 2016 filed by the petitioner, the scale of pay of the petitioner was re-fixed at the scale of Rs.1390-2970. Accordingly, the District Library Officer, by his Order dated 28th August, 2018, re-fixed the pay scale of the petitioner at the scale of Rs.1390-2970. Although the next increment of the petitioner was scheduled on 1st August, 1992, but, erroneously, the increment was paid to him on 1st September, 1991. As per Rule 7 of Memo No. 33-EDN(B) dated 7th March,1990 an increment should be given to each and every employee only after completion of a year. But, the petitioner was given two increments in a year erroneously. By a letter dated 29th June, 2020 addressed to the District Library Officer the petitioner admitted that he received additional increment after the earlier writ petition filed by him was disposed of. In the letter the petitioner intended to adjust the entire excess amount drawn by him during the tenure of his service from his gratuity amount. Owing to wrong fixation of

scale of pay a sum of Rs. 1,73,718/- was paid in excess to the petitioner and the said amount was deducted from his retiral benefits. The answering respondents submit that the excess amount was not the income of the petitioner, but it was an overpayment due to procedural lapses on their part. On such grounds the answering respondents seek dismissal of the writ petition.

6. In his affidavit-in-reply the petitioner denies the averments as made in the affidavit-in-opposition. The petitioner states that though he retired from service on superannuation on 30th June, 2020 his retiral dues were not processed even after lapse of fourteen months after his retirement. The letter dated 29th June, 2020 submitted by him under his handwriting will demonstrate that the petitioner was suffering from various health conditions and facing serious financial hardship due to non-disbursement of his retiral benefits. Faced with financial crisis, he yielded to the pressure of the respondent No. 4 to write a consent letter. Denying and disputing the averments of the affidavit-in-opposition the petitioner reiterates his stand that the respondent-authorities cannot deduct the aforesaid amount out of his retiral benefits.

7. Admittedly, the petitioner was appointed as the Librarian of Shibnath Shastri Pathagar, P.O.- Joynagar Majilpur,, South 24-Parganas on 21st September, 1984 at the pay scale of Rs. 1040-1920. He obtained bachelor degree in Library and Information Science on 14th August, 1991. By an Order dated 6th June, 2016 passed by this High Court in a writ petition being W.P 9065(W) of 2016 the pay scale of the petitioner was re-fixed at the pay scale of Rs.1390-2970. In compliance with this Order the District Library Officer by his Order dated 28th August, 2018 re-fixed the pay scale of the petitioner at Rs.1390-2970. It is the contention of the respondents that the next increment of the petitioner was scheduled on 1st August, 1992, but erroneously, the said

increment was paid to him on 1st September, 1991 and thereby the aforesaid amount of Rs.1,73,718/- was over drawn by him.

8. Learned Counsel appearing for the respondents argues that the petitioner by a letter dated 29th June, 2020 addressed to the District Library Officer, South 24-Parganas admitted that he had over drawn the aforesaid amount and requested the concerned authority to deduct the amount out of his gratuity. According to learned counsel the petitioner is now estopped from retracting from the stand taken by him in the letter. Learned Counsel further argues that the petitioner has not come to this Court with clean hands since he has suppressed the aforesaid letter in his writ petition. On such score, learned Counsel submits that the writ petition is liable to be dismissed.

9. Per Contra, learned Counsel appearing for the petitioner submits that even after lapse of fourteen months since the retirement of the petitioner the respondent authorities did not process the pension of the petitioner. Placing reliance on a decision in the case of ***State of Punjab and Others-Vs- Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334*** learned counsel argues that as per the directive issued by the Hon'ble Apex Court recovery from employees to whom excess payment has been made for a period in excess of five years before order of recovery is issued is impermissible. Besides, recovery of excess payment is impermissible from a retired employee. Learned Counsel submits that since the petitioner was deprived of getting pension in time due to financial crisis he under the pressure of the concerned authority was compelled to write the aforesaid letter. Learned Counsel argues that in view of the directive of the Hon'ble Apex Court in the decision (supra) requiring any letter by the authority concerned from the concerned employee towards adjustment of overdrawn amount with retiral benefits or submission of any letter by the employee in this regard is not warranted by law. Placing reliance on an another decision in the case of ***State of West Bengal and Others –Vs- Smt. Ila Giri and***

Ors reported in ***2014(3)CLJ (CAL) 271*** learned counsel submits that the petitioner is entitled to get back the amount of money so deducted with interest thereon.

10. In the decision in the case of ***Rafiq Masih (White Washer)*** (supra) the Hon'ble Apex Court at paragraph 18 has held as under:

> ***"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:***
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> ***(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).***
>
> ***(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.***
>
> ***(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.***
>
> ***(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.***
>
> ***(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."***

11. As mandated by the Hon'ble Apex Court, recovery from a retired employee or an employee who is due to retire within one year of the order of recovery or recovery from an employee, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued is impermissible.

12. As it appears from the affidavit-in-opposition, increment of pay was erroneously paid to the petitioner with effect from 1st September, 1991 instead of 1st August, 1992 and thereby there has been over drawal of the aforesaid amount by the petitioner. It is evident from the Pension Payment Order dated 5th August, 2021 that the Directorate of Pension, Provident Fund and Group Insurance directed therein that the aforesaid amount of Rs. 1,73,718/- shall be deducted from the retiral benefits of the petitioner. As mandated by the Hon'ble Apex Court in ***Rafiq Masih (White Washer)*** (supra), such recovery of the aforesaid amount by the authority concerned after more than 29 years after the petitioner retired from service is legally impermissible. In an earlier decision in the case of ***Shyam Babu Verma and Others-Vs-Union of India and Others reported in (1994) 2 SCC 521,*** which was considered in ***Rafiq Masih,*** the Hon'ble Apex Court has held that if any higher pay was given to an employee by the concerned authority erroneously and the employee had no fault on his or her part, in that event it would be unjust and improper to recover the excess amount already paid to him/her. That being so, asking for a letter from the petitioner requesting the authority concerned to adjust the overdrawn amount with his retiral benefits or voluntarily submission of any letter by a retired employee seeking adjustment of the amount overdrawn by him in the year 1991 is not warranted by law in view of the decisions (supra).

13. Therefore, the Order passed by the concerned authority directing the deduction of the aforesaid amount from the retiral benefits of the petitioner is vitiated with illegality.

14. In the decision in the case of ***State of West Bengal and Others –Vs- Smt. Ila Giri and Ors*** reported in ***2014(3)CLJ (CAL) 271*** this Court has held that while Ordering payment of retiral benefits the Court may direct that such retiral benefits shall be paid together with interest thereon.

15. In view of the above, the petitioner is entitled to get back the aforesaid deducted amount of Rs. 1,73,718/- . Besides, he is entitled to get interest @ 6% per annum on the amount from the date of recovery of the amount till the amount is paid.

16. With the aforesaid observation the writ petition is disposed of with the following direction.

17. The respondents are directed to refund the deducted amount of Rs.1,73,718/- with interest @ 6% per annum thereon from the date of deduction of the amount till the amount is refunded to the petitioner within four weeks from the date of communication of the Order.

18. Accordingly, the writ petition stands disposed of.

19. No order as to costs.

20.Urgent certified website or Photostat copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)