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08.12.2022
S.D.

W.P.A. 20507 of 2019

Ranat Kumar Pandey
Vs.
West Bengal State Minor Irrigation
Corporation Limited & Ors.

Mr. Manas Kumar Ghosh
Ms. Susmita Dey (Basu)

... For the Petitioner

Ms. Sonal Sinha

....For the W.B.S.M.I.C.L.

The petitioner challenges an impugned order dated July 30, 2019 whereby a sum of Rs.2,79,849/- was deducted from the retiral benefits of the petitioner. The petitioner superannuated from his service on November 30, 2019. The impugned order was few months prior to the retirement of the petitioner on July 30, 2019.

The petitioner worked as an operator with the West Bengal State Minor Irrigation Corporation Limited (in short, “WBSMICL”). The petitioner was a Group – ‘C’ employee.

Ms. Dey (Basu), learned counsel appearing on behalf of the petitioner argues that such a deduction was arbitrary and illegal. She submits that she is squarely covered by the decision reported in **(2015) 4 SCC 344 (The State of Punjab and Ors. vs. Rafiq Masih (White Washer))**. She relies on the

conditions laid down in sub-paragraph nos. (i) to (v) of paragraph no. 18 of the said judgment wherein the recovery by the employers is held to be impermissible in law in the following conditions.

“(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 case 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.”

She further submits, that not only the petitioner is a Group – ‘C’ employee but also the recovery of the excess amount has been made from an employee who was to retire within one year.

Ms. Sinha, learned counsel appearing on behalf of the employer/WBSMICL submits that the petitioner’s case is different from that of **Rafiq Masih** (supra). She relies on the Circular dated July 14, 2010 issued by the Managing Director, WBSMICL in support of her contentions that pay

fixation/enhancement of the pay was '*provisional*' and '*overdrawal*', if any, was recoverable forthwith. She submits that since it has been made of the said benefits unequivocally clear by the Memo dated July 14, 2010 that the benefits are provisional and recovery could be made, the petitioner cannot maintain a case against recovery of an overdrawn amount that was wrongly granted to him.

Having considered the rival submissions of the parties and the materials placed on record, this Court finds;

(a) the petitioner is squarely covered by the ratio in the case of **Rafiq Masih** (supra).

(b) The petitioner is not only a Group – 'C ' employee but was also an employee who few months before his retirement, from whom the amount of Rs.2,79,849/- was sought to be recovered on account of being overpaid.

(c) Reliance is placed by this Court on the Division Bench Judgment in the case of **West Bengal State Minor Irrigation Corporation Ltd. & Ors. Vs. Pradosh Kumar Kundu**) in M.A.T. No. 750 of 2022.

(d) It is also not lost upon this Court that the overpayment/overdrawal made to/by the petitioner was not on account of any misrepresentation by the

petitioner relying on **Sahib Ram vs. State of Haryana and Ors.** reported in **1995 Supp (1) SCC 18.**

In the light of the discussions above, this Court finds that the petitioner who has superannuated from service on November 30, 2019 will suffer extreme hardship in the event the said amount of Rs.2,79,849/- is not paid to him. The deduction of the amount for being overdrawn has already caused hardship to the petitioner.

In the circumstances, the impugned order dated July 30, 2019 is quashed and/or set aside.

The respondent authorities are directed to pay the said overdrawn amount of Rs.2,79,849/- within six weeks from date to the petitioner.

With the directions aforesaid, **W.P.A. 20507 of 2019** is **disposed of.**

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)

