109 15.03.2022
BD Ct.15

W.P.A. 25382 of 2018

(Through Video Conference)

Sri Mukundalal Halder
-vs-
State of West Bengal & Ors.

Mr. Chittapriya Ghosh
Mr. Samir Kumar Adhikari
... for the petitioner.

Mr. Tapan Kumar Mookherjee
Mr. Gourav Das
... for the State.

The writ petitioner was an approved clerk of a Government Aided High School who retired on superannuation on 31st August, 2002 and subsequently on processing pension papers entire retiral dues were released in favour of the writ petitioner excepting Rs. 12036/- which was found as excess drawn by the petitioner during his tenure.

Being aggrieved by such decision of the respondent authorities to deduct Rs. 12036/- from the gratuity of the petitioner, the writ petitioner filed a writ petition being W.P. 11700 (W) of 2003 which was disposed of by a Co-ordinate Bench vide order dated 12th May, 2015 directing the concerned respondent authorities to ascertain whether the amount in question was drawn in excess by the petitioner or not and if it is found that petitioner was not paid in excess then the authority was directed to release the said amount. Pursuant to such direction passed by the Co-ordinate Bench on

12th May, 2015 the District Inspector of Schools(S.E), Paschim Medinipur, being the respondent no. 4, passed an order as contained in Memo dated 1st July, 2016 whereby it has been held that said amount of Rs.12036/- is not payable to the petitioner and rejected the claim of the petitioner. The Memo dated 1st July, 2016 issued by the respondent no. 4 is under challenge in this present writ petition.

Mr. Chittapriya Ghosh, learned advocate, appears on behalf of the writ petitioner and submits that after superannuation of the petitioner on 31st August, 2002 by making wrong calculation an amount of Rs.12036/-was found to be excess drawn. In support of such contention attention of this Court has been drawn to page 60 of the writ petition wherefrom it appears that just before superannuation of the petitioner the then Headmaster of the school made an insertion in the service book of the petitioner and alleged that the petitioner misappropriated sum of Rs.10,430/-. It has further been submitted that against such allegation of misappropriation of fund no disciplinary proceeding was initiated against the petitioner to substantiate such allegation. It has also been submitted that Rs. 1606/- was wrongly calculated as overdrawn since the basis of such calculation has not been spelt out in any proceeding during the tenure of the petitioner. Therefore decision to deduct of Rs.12036/- from the gratuity of the petitioner is not tenable. It has also been submitted that unnecessarily a stigma has been attached to the service career of the petitioner by making insertion by the then Headmaster of the school in the service book of the petitioner on 16th June, 2002 which was uncalled for.

Mr. Tapan Kumar Mookherjee, learned Additional Government Pleader appears on behalf of the State respondents and has defended the decision of the respondent no. 4 as contained in the Memo dated 1st July, 2016 and it has been submitted that there is no wrong in calculating the overdrawn amount of Rs. 12036/- and, as such, rightly the said amount was deducted from the gratuity of the petitioner. On posing question to Mr. Mukherjee, what was the basis of calculating Rs. 1606/- as overdrawn this Court does not find any satisfactory answer.

This Court has heard learned advocates representing the parties and perused the relevant materials available on record. By order of the Co-ordinate Bench dated 12th May, 2015 the concerned authority was directed to take a decision and it was also made clear that if the alleged excess drawn amount was not properly calculated in that event petitioner is entitled to receive the said amount. The respondent no. 4, in his turn while taking decision has unnecessarily relied upon the insertion of the Headmaster of the School dated 16th June, 2002 and decided that Rs.10,430/- needs to be deducted from the gratuity of the petitioner since there is an allegation by the then Headmaster of the School that the petitioner misappropriated sum of Rs.10,430/- though fact remains that no disciplinary proceeding was initiated against the petitioner at the material point of time and such allegation remains unsubstantiated till the superannuation of the petitioner on 31st August, 2002. Therefore, the respondent no. 4 cannot fasten such amount of Rs.10,430/- upon the petitioner under the garb of excess drawn amount.

In addition thereto, though statement has been made in the impugned order dated 1st July, 2016 that amount of Rs. 1606/- is found to have been excess drawn by the petitioner for the period from 1st March 1961 to 1st April, 1981 but the calculation which can lead to such finding has not been disclosed in the impugned order. Therefore, the decision of the respondent no.4, which approved deduction of alleged excess drawn amount to the tune of Rs. 12036/- is bad and untenable and as such, set aside.

It is also relevant to further take into consideration the fact that such alleged excess drawn amount was deducted after superannuation of the petitioner at the time of releasing the retiral dues by issuing the pension payment order which is impermissible in view of the ratio of the Judgement of the Apex Court reported in (2015) 4 SCC 334 {State of Punjab and Ors. -vs- Rafiq Masih) (White Washer) and Ors.}.

In view of the above discussion the writ petition stands allowed and the Memo dated 1st July, 2016 stands set aside thereby directing the concerned respondent authorities to refund Rs. 12036/-to the petitioner along with 8% interest p.a. from 1st September, 2002 till date of payment within a period of eight weeks from the date of communication of this order.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)