CALCULTTA HIGH COURT IN THE CIRCUIT BENCH
AT JALPAIGURI

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WPA 75 of 2022
(Bijay Mukhia Vs. The State of West Bengal & Ors.)

Mr. Debarshi Dhar
....For the petitioner

Mr. Hirak Barman
....For the State

Affidavit of service filed in court today is taken on record.

In this writ petition petitioner has prayed for release of Rs. 204346/- which according to the petitioner was wrongly deducted from his gratuity at the time of releasing retiral dues after issuance of pension payment order dated 30th June, 2021. Petitioner retired on 30th April, 2020 and subsequently pension payment order was issued vide memo dated 30th June, 2021.

It appears from the said pension payment order that Rs. 204346/- was deducted from the gratuity of the petitioner towards alleged excess drawn amount. It has been submitted on behalf of the petitioner that after his superannuation such amount cannot be deducted from his retiral dues.

Accordingly, petitioner has prayed for refund of the said overdrawn amount which was wrongly deducted from his gratuity.

Mr. Hirak Barman, learned advocate appears on behalf of the State-respondents and has defended the steps taken by the respondent authorities while deducting the said amount from gratuity.

Having considered the submission made on behalf of the learned advocates representing the parties it appears that the issue of demand of excess drawn amount after retirement at the time of releasing retiral dues is no more *res integra* in view of the judgement of the Apex Court reported **in (2015) 4 SCC 334 [State of Punjab & Ors. Vs. Rafiq Mashi (White Washer) & Ors.];** paragraph-18 Rafiq Mashi (supra) is quoted below:-

" 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 hereinabove, we may, as a ready reference summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(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 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."

In view of aforesaid decision of the Apex Court this Court finds it apposite to direct the concerned respondent authorities to refund the amount deducted by the respondent authorities while releasing retiral dues in his favour.

Accordingly, Treasury Officer, Darjeeling being the respondent no. 3 is directed to refund the amount deducted from the retiral dues of the petitioner within a period of 12 (twelve) weeks from the date of communication of this order.

With the above direction, writ petition stands disposed of.

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)