CALCUTTA HIGH COURT IN THE CIRCUIT BENCH
AT JALPAIGURI

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<u>WPA 100 of 2022</u>
(Rajendra Prasad Sharma Vs. The State of West Bengal & Ors.)

Mr. Deborshi Dhar
....For the petitioner

Mr. Subir Kumar Saha
Ms. Bedashruti Bose
....For the State

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

Petitioner retired on superannuation on 31st March, 2014. After superannuation while processing pension case respondent authorities calculated Rs. 599000/-as excess drawn amount, which petitioner was directed to refund before release of retiral dues. Petitioner deposited the said amount on 14th November, 2014 with the appropriate authority and the treasury challan was issued in favour of the petitioner showing such deposit. Pension Payment Order was issued vide memo dated 1st August, 2014 releasing retiral dues. Petitioner claims refund of alleged excess drawn amount which he had to deposit.

It is submitted on behalf of the petitioner that after retirement of the petitioner under the garb of excess drawn amount no amount can be demanded by the respondent authorities. It is also submitted that this is not a case of mis-representation and fraud by which petitioner managed to receive the said amount during his tenure.

Mr. Subir Kumar Saha, learned advocate appears on behalf of the State-respondents and he has defended the decision of the respondent authorities on demand of deposit of alleged overdrawn amount.

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."

Though there is a delay in filing the writ petition, which the petitioner seeks to justify by stating that there is no statutory period of limitation and neither parties have suffered due to this delay. It is the submission of the petitioner that accordingly the petition should be allowed. The petitioner relies upon an order in **W.P. 17557 (W) of 2017 (Narayan Chandra Saha Vs. State of West Bengal & Ors.)** wherein a co-ordinate bench had relied upon the Supreme Court judgement in the case of **Union of India Vs. Tarsem Singh,** reported in **(2008) 8 S.C.C. 648** on the issue of limitation relating to payment or re-fixation of pay or pension wherein the Apex Court had held that relief may be granted in spite of delay as it does not affect the rights of the third party.

In view of the aforesaid decision of the Apex Court this Court finds it apposite to direct the concerned respondent authorities to refund the amount deposited by the petitioner on demand after his retirement.

Accordingly, Treasury Officer, Darjeeling being the respondent no. 3 is directed to refund the amount deposited by the petitioner on demand after his retirement 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.)