

14.07.2022
Court No.1
Item No.69
pk/AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

WPA 1845 of 2022

**Nirmal Kumar Sarkar
Vs.
The State of West Bengal and Ors.**

Ms. Sabita Khutia (Bhunya) ... For the Petitioner.

Mr. Subir Kumar Saha ... For the State.

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

In the present case the writ petitioner is aggrieved by the order of deduction of the overdrawn amount of a sum of Rs.93,099/- after his retirement. The writ petitioner was an Executive Assistant of Mathurabagan Gram Panchayet who retired from service on 31.01.2017 and the pension was paid by the authorities after deducting the aforesaid amount as overdrawn amount.

The issue whether overdrawal of pay can be adjusted against retirement dues of an employee has been settled in the case of *Shyam Babu Verma & Ors. v. Union of India & Ors.*, reported in (1994) 2 SCC 521 and also in a later decision in the case of *Syed Abdul Qadir & Ors. v. State of Bihar & Ors.* reported in (2009) 3 SCC 475.

Counsel on behalf of the respondent authorities submits that there is no considerable delay in approaching the Writ Court and accordingly, the Writ Court should not allow such a prayer.

A judgement of a co-ordinate Bench of this court in the case of *Shiba Rani Maity v. The State of West Bengal* in W.P. No. 29979 (W) of 2016 as well as *Biswanath Ghosh v. The State of West Bengal* in W.P. No. 27562 (W) of 2016 has categorically held that in a case where no rights have accrued in favour of a third party, the petitioner who has suffered by reason of non-payment of amount withheld on the grounds of an alleged overdrawal has a right to approach this court for appropriate relief. The relevant paragraphs from WP No. 29979 (W) of 2016 are set out below:

“(15) The only other question is that whether the writ petition should be entertained in spite of delay of about 17 years in approaching this Court. In a judgment and order dated 6 September, 2010 delivered in MAT 1933 of 2010 passed by a Division Bench of this Court and held that although the petitioner had approached the Court after a lapse of nine years, no third party right had accrued because of the delay and it was only the petitioner who suffered due to non-payment of the withheld amount on account of alleged over-drawal. Accordingly the Division Bench set aside the order of the Learned Single Judge by which the writ petition had been dismissed only on the ground of delay.

*(16) Following the Division Bench judgment of this Court adverted to above, I hold that it is only the petitioner who suffered by reason of the wrongful withholding of the aforesaid sum from his retiral benefits. Although there has been a delay of about 17 years in approaching this Court, the same has not given rise to any third party right and allowing this writ application is not going to affect the right of any third party. It may also be noted that the Hon’ble Apex Court observed in its decision in the case of **Union of India vs. Tarsem Singh, (2008)***

3 SCC 648 *that relief may be granted to a writ petitioner in spite of the delay if it does not affect the right of third parties.”*

It is clear from the above that a Writ of Mandamus is prayed for is maintainable in the facts of the present case.

I accordingly direct the concerned treasury officer to release the amount of Rs.93,099/- to the petitioner along with interest @ 8% per annum with effect from the date of issuance of the pension payment order. Such payment is to be made to the petitioner within a period of six weeks from the date of communication of this order.

With the aforesaid directions, the instant writ petition is disposed of.

Urgent certified website copy of this order, if applied for, be made available to the petitioner upon compliance with the requisite formalities.

(Rajasekhar Mantha, J.)