

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 521 of 2015

Samar Chattopadhyay

Vs

The State of West Bengal & Ors.

Mr. Ekramul Bari, Adv.
Mr. Syed Mansur Ali, Adv.
Sk. Imtiaz Uddin, Adv.

..... for the Petitioner

Mr. Jahar Lal De, Adv.
Mr. Tapas Kumar Mandal, Adv.

..... for the State

Heard On : 08.06.2023

Judgment on : 21.06.2023

Rabindranath Samanta, J:-

1. Challenge in this writ petition is against a Memo dated 10th December, 2013 issued by the Director of Technical Education and Training, West Bengal directing recovery of an amount as overdrawn from the petitioner.
2. Background facts which led to the filing of the writ petition may be summarised as under:

The petitioner was appointed as a Lecturer in Ramkrishna Mission Shilpatitha, Belghoria, Kolkata – 700056 on 26th March, 1996. Since his appointment he discharged his duties with sincerity and devotion and without any adverse remark from any corner. The petitioner retired from

service on superannuation on 31st December, 2013. Though he retired from service on 31st December, 2013, terminal benefits including Provident Fund, Gratuity, monthly pension, arrears etc were not granted to him. The petitioner made representations to the concerned respondent authorities requesting them to take steps for disbursement of all his outstanding dues and extend retiral benefits to him.

In terms of the Memorandum dated 14th October, 2007 issued by the Department of Technical Education and Training, Government of West Bengal, benefits under the career advancement scheme were firstly granted to the petitioner on 26.03.2001 and thereafter the benefits under the same scheme were granted to him for the second time on 26.03.2006.

3. The petitioner states that while the benefits under the career advancement scheme were granted to him for the second time a meeting was convened on 25.01.2008 and in the meeting the Additional Director of Technical Education & Training was present. As regards fixation/finalisation of the benefits under the career advancement scheme, the petitioner had no role to play. The decision as to conferring the benefits under career advancement scheme was taken by the concerned authority. While his representation seeking release of pensionary benefits was pending and twenty days before his retirement. the Director of Technical Education & Training, West Bengal by issuing a Memo dated 10th December, 2013 directed the Secretary, Ramkrishan Mission Shlipitha, to recover the excess amount already paid to the petitioner as benefits under the career advancement scheme for the second time. In the Memo dated 10th December, 2013 the Director of Technical Education & Training has observed that the benefits under the career advancement scheme for the first time ought to have been granted to the petitioner on 26.03.2002 instead of 26.03.2001 since he obtained the Master's degree in the year 1996-1997. The petitioner alleges that the Memo dated 10th December, 2013 by which the Secretary of the Educational Institution was directed to

recover the overdrawn amount from him is arbitrary, whimsical and illegal. Because of the illegal acts on the part of the state authority, sustaining livelihood of the petitioner and his family members has been at stake. The petitioner emphatically states that neither he participated in the process of fixation of benefits under the career advancement scheme, nor he practised any fraud upon the authority concerned to get the benefits under the aforesaid scheme.

Under the circumstances as above, the petitioner seeks direction that the Memo dated 7th December, 2013 issued by the Director of Technical Education & Training, West Bengal be set aside and the concerned respondents be directed to disburse his retrial benefits with interest thereon.

4. The respondent Nos. 1 and 2 in their affidavit-in-opposition admit that the petitioner was appointed as a Lecturer in Ramkrishna Mission Shilpaith on 26.03.1996. But, while the petitioner joined as a Lecturer in the Educational Institution on 26.03.1996 he then did not posses the M.Tech degree. He passed M.Tech degree in the academic year 1996-1997 i.e. after 1st January, 1996. The benefits under career advancement scheme under the Memo dated 24th October, 2007 are admissible to those lecturers who rendered six years of continuous and satisfactory service. But the lecturers who have Ph.D degree are entitled to get relaxation of two years and in case of lecturers who have Master's degree they are entitled to get relaxation of one year to get the benefits under the career advancement scheme. Since the petitioner did not possess M.Tech degree on 01.01.1996 with effect from which the Memorandum dated 24th October, 2007 came in force he is not entitled to get the benefit of relaxation of one year. The authority of the Educational Institution erroneously granted the benefits under the career advancement scheme for the first time on 26.03.2001 instead of 26.03.2002 and for the second time on 26.03.2007. The answering respondents state that in such factual matrix, the Director of Technical

Education & Training, West Bengal by issuing the Memorandum dated 10th December, 2013 rightly directed the Secretary of the Institution to recover the excess amount disbursed to the petitioner. In a supplementary affidavit-in-opposition these answering respondents state that the petitioner by submitting an undertaking on 23.06.2015 requested the Institution authority to recover an amount of Rs. 14,16,676/- which was overdrawn by him from his gratuity, commutation value of pension and arrear pension. On such grounds and denying and disputing the averments as made in the writ application the answering respondents submit that the writ application is liable to be dismissed with costs.

5. The petitioner in his affidavit-in-reply states that while the matter came up for consideration before a learned Co-ordinate Bench on 05.02.2015 the learned Co-ordinate Bench passed an order directing the Official respondents to compute the admissible retrial dues of the petitioner and to pay the same to him without prejudice to the rights and contentions of the parties in the writ application. The learned Single Bench also directed that the petitioner's claim for additional retrial benefits shall be decided at the time of final hearing. Despite such order of this Court, the Assistant Director, Pension, Provident Fund and Group Insurance, Government of West Bengal obtained an undertaking from him to the effect that the overdrawn amount would be recovered in the manner as above. The petitioner submits that while this Court was in session of the matter, obtaining an undertaking from the petitioner by the concerned authority is malafide and impermissible in law.
6. Learned Counsel appearing for the petitioner submits that the impugned Memorandum dated 10.12.2013 was issued twenty days before his client retired from service. Learned counsel further submits that since his client possessed the M.Tech degree when the Government Memorandum dated 24.10.2007 was issued, the benefits under career advancement scheme were rightly extended to his client . Learned Counsel points out that while the benefits under the career advancement scheme were finalised and

extended to the petitioner, the petitioner had no role in that regard and no fraud or misrepresentation was practised by him. Even if any erroneous fixation was made, no amount could be recovered from a retired employee or from an employee who is to retire within one year. If the amount allegedly described as overdraft amount is recovered from the petitioner, he will be put in immense hardship. In support of his submission learned counsel has placed reliance on a decision in the case of ***State of Punjab and Others –Vs- Rafiq Masih (White Washer)*** reported in (2015) 4 SCC 334, a decision in the case of ***Kalyan Kumar Chattopadhyay -Vs- The State of West Bengal and Others*** reported in 2006 SCC Online Cal 41, a decision rendered in WPA 20231 of 2022 (***Rafik Sekh Vs. The State of West Bengal and Others***), a decision rendered in WPA 9999 of 2022 (***Srabani Taraphder Vs. The Indian Institute of Technology, Kharagpur & Ors.***) and a decision rendered in WPA 14214 of 2015 (***Ommey Kulsum Mallick –Vs- The State of West Bengal and Others.***

7. Per Contra, learned counsel representing the state submits that the Memorandum dated 24.10.2007 relating to benefits under the career advancement scheme clearly speaks that one year's relaxation may be extended to those lecturers who have M. Tech degree. Learned Counsel points out that the petitioner obtained the M.Tech degree in the academic year 1996-1997 i.e. after 01.01.1996. Since the petitioner did not possess M.Tech degree at the material point of time, the benefits under career advancement scheme for the first time were admissible to him on 26.03.2002 instead on 26.03.2001 and for the second time on 26.03.2007 instead of 26.03.2006. Learned counsel also points out that since the petitioner by submitting an undertaking requested the authority of the educational institution to recover the overdrawn amount from his pensionary benefits, he is now estopped from claiming the reliefs as sought for in the writ application. Learned counsel argues that while the petitioner was paid the excess amount out of the tax payers' money illegally, the same should be recovered from him. In support of his argument learned counsel

has cited a decision in the case of **Chandi Prasad Uniyal and Others –Vs- State of Uttarakhnad and Others reported in (2012) 8 SCC 417.**

8. Admittedly, the petitioner was appointed as a lecturer in Ramkrishna Mission Shipaitha on 26.03.1996. From a certificate of the petitioner annexed to the affidavit-in-opposition it is evident that the petitioner obtained the degree of Master of Technology (Industry- Oriented) from the University of Burdwan in 1997. Undisputedly, the petitioner who joined on 26.03.1996 was granted the benefits under the career advancement scheme for the first time on 26.03.2001 and for the second time on 26.03.2006. As it appears from the materials on record, the petitioner had no role while the benefits under the career advancement scheme on two occasions were finalised. From the affidavit-in-opposition and the supplementary affidavit in opposition used by the answering respondents I do not find either any averment or any iota of document which will demonstrate that the petitioner managed to get the aforesaid benefits either by practicing fraud or representation. As a lecturer/employee of the Educational Institution he received the monetary benefits from his employer what his employer decided on consideration of the relevant government order/notification and in exercise of his wisdom.
9. The Memorandum dated 24.10.2007 issued by the Director of Technical Education & Training as to extending the benefits under career advancement scheme may be excerpted as under:

“ In continuation of this Deptt.’s G.O No. 2101-TET(Poly) 5p-18/98, dated 11-10-99, the undersigned is directed by order of the Governor to say that the Governor, in pursuance of the recommendation of the All India Council for Technical Education as contained in its communication No. 1-65/CD/NEC/98-99, dated 30.12.1999, has been pleased to accord approval to the extension of the benefits of Career Advancement Scheme in favour of the lecturers in Engineering and Non-Engineering subjects of the Govt./Govt.

Sponsored Polytechnics of the State with retrospective effect from 01-01-96 in the following manner:-

A. Lecturers in senior scale of Rs.10,000-325-15,200/-.

Eligibility criteria for movement lecturers into lecturers in senior scale will be as follows:-

- i) They shall have rendered 6(six) years of continuous and satisfactory regular service with 2(two) years relaxation for those with Ph.D.Degree and one year relaxation for those with M.Phil/M.E./M.Tech. Degree or equivalent Degrees;***
- ii) They shall have to be declared confirmed in the post;***
- iii) They shall have participated in one orientation course/ induction training and one refresher course or industrial training of aggregate duration of 8 weeks or have undertaken other appropriate continuing education or training programmes of comparable quality and duration as may be specified or approved by the AICTE. Those with Ph.D. Degree would be exempted from these course/training requirements.***

B. Lecturers in Selection Grade Scale of Rs. 12,000-420-18,300/-

Eligibility criteria for movements of lecturers in senior scale to lecturers in Selection Grade Scale will be as follows:

- i) They shall have put in service for 5 years as lecturers in senior scale;***
- ii) They have acquired Master's Degree with relaxation of those who have recruited prior to 01-01-96;***
- iii) They have consistently satisfactory performance appraisal reports;***
- iv) They have to be selected through the Selection Committee constituted in terms of this Deptt.'s G.O. No. 931-TET(Poly)/***

5p-3/05 dated 6-7-05 read with G.O No. 1015-TET(Poly)/5p-3/05 dated 22-7-05.

2. The Governor has further been pleased to decided that the lecturers who have put in service for more than 6 years of service but less than 8 years of service as on 31-12-1995 and also more than 11 years of service but less than 16 years of service as on 31-12-1995 will also be entitled to the benefits as noted at 'A' and 'B' above as the case may be with effect from 01-01-1996 subject to fulfilment of other terms and conditions.

3. All orders granting the benefits of Career Advancement Scheme shall be vested with the Govt. In Technical Education & Training Department.

4. All previous orders issued by this Deptt. In this context shall stand cancelled forthwith.

5. This order issues with the concurrence of the Finance Deptt. Vide their U.O. No. 930-Gr. 'P' (Pay), dated 12-10-07."

10. The authority of the Educational Institution, on consideration of the M.Tech degree of the petitioner, granted the benefits under the career advancement scheme to him on relaxation of one year. There is no express provision in the Memorandum that relaxation of one year would be given to those lecturers who possessed M.Tech degree as on 01.01.1996. Be that as it may, the institution authority in terms of the Memorandum dated 24.10.2007 further extended the benefits to the petitioner under the career advancement scheme. It is trite to say that in ordinary course of business every sponsored/government institution while granting any financial benefits to an employee of the institution, the authority concerned transmits copy of the relevant order granting such benefits to its higher authority at the helm. That being the position, it is obvious that the Director of Technical Education & Training, West Bengal was aware of

the orders by which benefits under the career advancement scheme were allowed to the petitioner. It is averred in the writ application that in the meeting by which the benefits under the second career advancement scheme were granted to the petitioner, the Additional Director of Technical Education & Training was present. Such averment in the writ application has not been controverted with sufficient averments by the answering respondents.

11. In the decision in the case of **Chandi Prasad Uniyal and Others** (Supra) the Hon'ble Apex Court at paragraph 14 has held as under:

“14. We are concerned with the excess payment of public money which is often described as “taxpayers’ money” which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

But, in a later decision in the case of **State of Punjab-Vs- Rafiq Masih (White Washer) (Supra)**, the Hon'ble Apex Court on consideration of the

decision in **Chandi Prasad Uniyal and Others** has postulated at paragraph 18 as under:

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from 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.”

12. From the aforesaid report it appears that the Hon'ble Apex Court has directed that recovery from the retired employees or the employees who are due to retire within one year of the date of recovery is impermissible in law. This view of the Hon'ble Apex Court has consistently been followed by this Court in the decisions in **Rafik Sekh** (supra), **Srabani Taraphder** (supra) and **Ommey Kulsum Mullick** (supra) as cited on behalf of the petitioner.

It is contended by the state respondents that since the petitioner by submitting a written undertaking requested the Secretary of the institution authority to recover the overdrawn amount of Rs. 14,16,676/- from his gratuity, commutation value of pension and arrear pension, the petitioner is now estopped from raising the plea that the overdrawn amount be refunded to him. I find that this written undertaking was submitted by the petitioner on 23.06.2015. In this context it would be pertinent to mention that on 05.02.2015 while the matter was taken up by a Co-ordinate Bench, the learned Judge of the Co-ordinate Bench directed that the official respondents should proceed to compute the admissible retiral dues of the petitioner and pay the same to him without prejudice to the rights and contentions of the parties. While such order was passed by this Court relating to disbursement of admissible retiral dues to the petitioner, asking written undertaking from the petitioner by the concerned authority smacks of malafides.

While the Hon'ble Apex Court in **Rafiq Masih** has mandated that it would be impermissible to recover from the retired employees or the employees who are to retire within one year of the order of the recovery, the undertaking asked by the authority from the petitioner is not warranted by law.

13. Having heard learned counsels appearing for the parties and in view of the legal proposition as above I think that the Memo dated 10.12.2013 issued

by the Director of Technical Education & Training, West Bengal is vitiated with illegalities and the same is liable to be quashed/set aside. Consequently, the recovery of the amount as above by the authority concerned from the petitioner is not legally sustainable. The pensionary benefits of the petitioner shall be calculated on the basis of the benefits extended to him under the career advancement scheme vide Memo dated 24.10.2007 as quoted above.

14. In the result, the writ petition merits success and the writ petition may be disposed of by passing the following order.

The Memo dated 10.12.2013 issued by the Director of Technical Education and Training, West Bengal is hereby set aside.

The concerned respondents are directed to refund the amount which has been recovered from the petitioner with 8% interest thereon from the date of recovery of the amount till the final payment within eight weeks from the date of communication of this judgment and order.

The concerned respondents are further directed to issue revised Pension Payment Order in favour of the petitioner commensurate with the last pay drawn by him after availing all the benefits under the career advancement scheme also within eight weeks from the date of communication of this judgment and order.

The concerned respondents shall pay the differential retrial benefits to the petitioner in terms of the modified or revised Pension Payment Order within four weeks from the date of issue of such PPO.

15. With the aforesaid directions the writ petition stands disposed of.
16. No order as to costs.
17. Parties may act on the Server Copy of this judgment and order duly downloaded from the Official Website of this Court.

18. Urgent certified/Photostat copy of this judgment and order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)