

**Ct.
No.
14**

16.02
2023

4
akh

Laxmi Pal & Ors.

-Versus-

The State of West Bengal & Ors.

Ms. Arpita Saha

...For the Petitioner

Ms. Sipra Majumdar

Ms. Prativa Ghatak

...For the State Respondents

The petitioners submit that no amount can be deducted from the retiral benefits of the deceased. Under such circumstances, the petitioners by preferring this writ petition seek direction upon the respondent authorities to refund the amount as deducted from the gratuity amount

with interest thereon.

The written instruction of the respondent authorities filed by the learned Counsel appearing on behalf of the State respondents be kept on record.

Learned Counsel appearing for the State respondents by referring to a letter dated 16th June, 2008 made by the petitioner No. 1 submits that the petitioner no.1 in the said letter made appeal to the authorities concerned to deduct the aforesaid overdrawn amount from the gratuity as admissible to her husband. Based on such letter learned Counsel submits that the petitioners are now estopped from challenging the deduction of the aforesaid overdrawn amount.

Learned Counsel appearing for the petitioners by referring to a decision in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334 submits that no amount can be deducted from the pensionary benefits admissible to a pensioner.

In the decision in the case of *Rafiq Masih (White Washer) (Supra)* the Hon'ble Apex Court at paragraph 18 has held as under:-

“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."*

As it appears from the record, the recovery has been made by the authorities concerned for a period in excess of five years. Besides, the employee out of whose retiral benefits the deduction has been made, is no longer in this world. I feel that the principle as enunciated by the Hon'ble Apex Court in **Rafiq Masih** will also be applicable to an employee who died in harness and because of his death Pension Payment Order has been issued to his dependent. I also feel that if the recovery as made is allowed to perpetuate it will cause great hardship to the family members, who have lost their bread earner.

In view of the mandate as declared by the Hon'ble Apex Court, the letter made by the petitioner No. 1 to the authorities concerned requesting it to deduct the overdrawn amount from the gratuity should be ignored as it violates the directive made by the Hon'ble Apex Court in the aforesaid decision.

Having heard the learned Counsels appearing for the parties and in view of the discussion as above I think that the writ petition has merit to succeed and accordingly the writ petition is allowed on contest.

The respondents, especially the respondent No. 3, the Treasury Officer, Uluberia, Howrah is directed to refund the deducted amount of Rs. 53,053/- with interest thereon at the rate of 8% p.a. from the date when it was recovered till the date of payment, within six weeks from the date of communication of this order.

With the aforesaid directions the writ petition stands disposed of.

There will be no order as to costs.

All parties may act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat copy of the order, if applied for, be supplied to the appellant on priority basis on compliance of necessary formalities, on priority basis.

(Rabindranath Samanta, J.)