

03.01.2023

DL-1

(PP)

Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 2644 of 2022

Naba Kumar Ghosh

Vs.

Union of India & Ors.

Mr. Manas Kumar Ghosh,
Ms. Susmita Dey (Basu),
Mr. Nabhajit Prasad Basu

.....for the petitioner.

Mr. Ajit Kumar Chaubey

....for Union of India.

In this writ petition, the petitioner has challenged an impugned order dated June 15, 2021 passed by Senior Accounts Officer (Pensions) pursuant to an order passed by the Hon'ble Coordinate Bench of this High Court on March 15, 2021 in WPA 3554 of 2021. By the said order, the Hon'ble Coordinate Bench directed the authorities concerned to consider the petitioner's representation in the light of the office memorandum dated March 1, 2004 and also in the light of the judgment in **State of Punjab and others Vs. Rafiq Masih (white washer) and others** reported in (2015) 4 SCC 334.

The undisputed facts in this writ petition are that the petitioner worked with the Garrison Engineers (North)/respondent no.2 and was promoted to the post of Fitter General Mechanic (HS-II) on October 7, 1996. The petitioner retired from the

services of Garrison Engineers (North), Ministry of Defence on December 31, 2004. The Punjab National Bank was the pension disbursing agency of the petitioner. Since the petitioner retired from services on December 31, 2004, he is covered under the office memorandum dated March 1, 2004 issued by the Ministry of Finance, Department of Expenditure, Government of India.

Ms. Dey (Basu), learned counsel appearing on behalf of the petitioner submits that by the impugned order dated June 15, 2021, the Senior Accounts Officer (Pensions)/the respondent no.5 did not consider the memorandum dated March 1, 2004 nor Rafiq Masih's case (supra) while disposing of the representation of the petitioner. The petitioner was granted revised pensionary benefits as per the office memorandum dated March 1, 2004 till July, 2018. Much after his retirement, from July 2018 the respondent authorities sought to deduct the purported overdrawn amount from the petitioner's pensionary benefits. The said act on the part of the respondent authorities is not permissible in law.

Mr. Chaubey, learned counsel appearing on behalf of the respondent nos.1 to 4 submits that the representation of the petitioner has been duly considered by the respondent no.5. He submits that

the petitioner's case is squarely covered by the judgment passed by the Hon'ble Apex Court in Civil Appeal No.3500 of 2006 (**High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh**)

Having considered the rival submissions of the parties and the materials placed on record, this Court finds that the impugned order squarely relies on an undertaking given by the petitioner for reimbursement to the bank in case of overpayment. No such undertaking has been produced by the respondent authorities in affidavit-in-opposition filed by them.

Furthermore, neither the office memorandum dated March 1, 2004 issued by the Ministry of Finance, Department of Expenditure, Government of India nor **Rafiq Masih's** case (supra) was considered by the respondent no.5 while disposing of the representation of the petitioner. Furthermore, in the case of **Jagdev Singh** (supra), the Apex Court has taken into consideration the exceptions noted in **Rafiq Masih** (supra). The Apex Court has also recognised the fact that in case of extreme hardship, the overdrawn amount should not be required to be refunded by the employee to the employer.

This Court finds that since the petitioner retired in 2004 and the excess amount, if any, paid to the

petitioner has not been due to any fault/fraud on the part of the petitioner, if such an amount is allowed to be withdrawn at such a belated stage the petitioner will suffer extreme hardship. The said action on the part of the respondent authorities would be harsh and arbitrary. The petitioner is squarely covered by the judgment of **Rafiq Masih** (supra)

In the light of the discussions above, the impugned order dated June 15, 2021 is quashed and/or set aside.

The respondent no.5 is directed to reconsider the representation of the petitioner dated October 21, 2020 within four weeks from date in the light of the observations made in the present writ petition along with the directions given by the Hon'ble Coordinate Bench by its order dated March 15, 2021. The petitioner will be given a personal hearing. The representation of the petitioner will be disposed of by a reasoned order. The reasoned order shall be communicated to the petitioner within two weeks of passing thereof.

With the directions aforesaid, **WPA 2644 of 2022** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)