

16-02-2023
Item No.9
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.3050 of 2023
Tapas Kumar Sarkar

-vs-

The State of West Bengal & Ors.

Mr. Sharanyo Chatterjee
Ms. Subhanwita Ghosh
Mr. Kaustabh Banerjee ...for the petitioner

Mr. Gausul Alam
Md. Yusuf Ali ...for the State

The writ petitioner retired from service on superannuation on December 31, 2021 as a librarian of Pally Unnayana Samity Pathagar, Kolkata – 700085. Besides, he was in additional charge of the librarian of a library namely Tripura Shankar Sen Sastri Smriti Granthagar, Kolkata – 700 014. After his retirement, the pension payment order was issued on August 10, 2022 in his favour.

The petitioner alleges that an amount of Rs.43,980/- has been deducted from his gratuity as an overdrawn amount. Also the petitioner contends that the last pay which he drew was Rs.46,000/-, but in the PPO the computation has been made holding his basic pay of Rs.22,350/-, instead of Rs.23,000/-. The petitioner made a representation to the authority concerned ventilating his grievances relating to the erroneous fixation of his basic pay therein, but to no effect. Narrating these and the other grievances in the writ petition, the petitioner seeks the following reliefs: –

“b. Issue a Writ of Mandamus directing the Respondents to refund the overdrawn salary of Rs.43,980/- along with interest of

8% p.a. as stated in paragraph 16 above.

c. Issue a Writ of Mandamus directing the Respondents to correct wrong fixation of pay and fix Rs.23,000/- as the basic pay of the Petitioner in his PPO and issue a fresh rectified PPO.

d. Issue a Writ of Mandamus directing the Respondents to pay the rectified pension as calculated on the basis of Rs.23,000/- (half of last drawn basic pay) along with interest of 8% p.a.

e. Issue a Writ of Mandamus directing the Respondents to issue the correct Provident Fund statement of the Petitioner in terms of the contentions raised by the petitioner in paragraph 6 above.

f. Issue a Writ of Mandamus directing the Respondents to pay the arrear salary along with 8% interest thereon as stated in paragraph 16 hereinabove.

g. Issue a Writ of Mandamus directing the Respondents to pay interest on Leave Salary @ 8% p.a. as stated in paragraph 16 hereinabove along with direction upon the respondents to issue the Leave Salary Statement to the Petitioner.

h. Issue a Writ of Mandamus directing the Respondents to issue duplicate service book of the Petitioner."

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

In the decision of in ***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."*

Since the petitioner is a retired employee, the authority concerned, after his retirement, cannot deduct the aforesaid amount of money as overdrawn. Therefore, so far as the order for refund of this amount is concerned, the concerned authority may be directed to refund the amount with appropriate interest thereon.

So far as the other prayers are concerned, I find that the petitioner made a comprehensive representation to the concerned authorities on December 23, 2022 (Annexure P12, p.55) and that the said representation has not yet been disposed of by the concerned authority.

Having heard learned counsels appearing for the

respective parties and on consideration of the document annexed to the writ petition, I feel that the writ petition may be disposed of by passing the following order.

The eighth respondent – the Deputy Director, Pension Department, Directorate of Treasuries and Accounts, Government of West Bengal, Kolkata – is directed to refund Rs.43,980/- to the petitioner as overdrawn amount with interest thereon @ 8% p.a. from January 1, 2022 till the date of final payment within six weeks from the date of communication of this order.

As regards other reliefs sought for by the petitioner as contained in the representation dated December 23, 2022, the fifth respondent – the Director, Directorate of Library Services, Government of West Bengal, Kolkata – shall consider and dispose of the said representation by a reasoned order giving opportunity of hearing to the petitioner and other necessary parties, if necessary, within a period of eight weeks from the date of communication of this order. The decision once made shall be communicated to the petitioner within a week thereafter.

With the aforesaid observations, WPA No.3050 of 2023 stands disposed of. No order as to costs.

Written instructions filed by the State be taken on record.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

[Rabindranath Samanta, J.]

