

13.12.2023
Court No. 13
Item No. 230
AP

WPA 2447 of 2020

**Saroj Kumar Das
Vs.
The State of West Bengal and Ors.**

Mr. Syamal Kumar Das
Mr. Ajay Barman Ray
Ms. Smita Pal

.... For the Petitioner.

Mr. Amal Kumar Sen
Mr. Sabyasachi Mondal

.... For the CSTC.

1. The petitioner is aggrieved by recovery of Rs.4,06,274/- from his gratuity amount.
2. The impugned order dated 28th June, 2018, by which recovery was effected, indicates a letter issued by the employer Calcutta State Transport Corporation (hereinafter referred to as “the CSTC”).
3. A report has been filed by the CSTC.
4. It appears that the petitioner’s qualification from the Ramkrishna Mission Shilpa Vidyalaya cannot be treated equivalent to an I.T.I. certificate. An I.T.I. certificate is to be issued essentially by the National Council of Vocational Training (NCVT).
5. It appears from the records that the petitioner’s scale was fixed on Rs.920 – 1617 payable to an I.T.I. certificate holder in the year 1990 pursuant to a ROPA.

6. The scale was fixed admittedly after receiving an undertaking from the petitioner on 10th January, 1991. Every subsequent pay revision until his superannuation was made on an undertaking in writing from the petitioner that he was refunded any excess payment in case of any wrong fixation of pay scale by the employer.

7. The employer CSTC, therefore, submits that the amount was liable to be recovered. He relies upon a decision of the Supreme Court in the case of ***High Court of Punjab & Haryana and Ors. Vs. Jagdev Singh*** reported in ***(2016) 14 SCC 267*** which carved out an exception to the dicta in the case of ***State of Punjab and Ors. v. Rafiq Masih (White Washer) & Ors.***, reported in ***(2015) 4 SCC 334***.

8. Counsel for the petitioner submits that the undertaking given was in standard form where he had no option to either deviate from or object to.

9. Having heard the learned counsel for the parties and having regard to the facts and circumstances of the case, this Court notices that the decision of ***Jagdev Singh (supra)*** was rendered in a case of a Civil Judge (Junior Division) in the State of Punjab. The said Civil Judge had undertaken in writing in course of his employment to refund any amount that was paid to him in excess of his entitlement. Recovery by the State of Punjab was upheld as an exception to the decision of ***Rafiq Masih (supra)*** particularly paragraph 18 thereof.

10. This Court, however, notices that Clause (i) of Para 18 of the said **Rafiq Masih (supra)** decision clearly prohibits any recovery being made in respect of Group C and Group D employees.

11. Admittedly, the petitioner is a Group C employee with the CSTC. It would be extremely unfair and onerous to the petitioner to allow any recovery to be made particularly after his superannuation. The actions of the CSTC to recovery are further un-equitable since the petitioner has been receiving the said allegedly incorrect scale of pay since 1990 until his superannuation in the year 2018 i.e. a period of 28 years.

12. In the facts and circumstances of the case, this Court is of the view that the recovery made from the petitioner's terminal benefits of the sum of Rs.4,06,274/- as mentioned in the order dated 28th June, 2018 is not permitted in law and is, therefore, quashed and set aside.

13. The petitioner shall be paid the sum of Rs.4,06,274/- together with interest on and from 1st July, 2018 till the date of actual payment of Rs.4,06,274/- at the rate of 7% per annum. Let the aforesaid payment be made mandatorily and positively within a period of four weeks from the date of receipt of a copy of this order.

14. In default thereof, the rate of interest shall stand increased to 9% per annum.

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

16. There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)