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6.2.2023
S.D.

W.P.A. 3537 of 2020

**Arabinda Roy
Vs.
The State of West Bengal & Ors.**

Ms. Susmita Dey (Basu)
... For the Petitioner
Ms. Sonal Sinha
....For the W.B.S.M.I.C.L.

The petitioner was a Group-C employee of the West Bengal State Minor Irrigation Corporation Limited (in short, WBSMICL). The petitioner was superannuated from his service on November 28, 2014. From the retiral benefits due and payable to the petitioner, a sum of Rs.89,483/- was deducted on the ground of the same being overdrawn by the petitioner.

Ms. Dey (Basu), learned counsel appearing on behalf of the petitioner submits that the petitioner has suffered extreme hardship for the purported recovery of the overdrawal from the retiral benefits. Furthermore, the petitioner has also suffered for belated disbursement of the retiral benefits in November 2015 approximately one year from the date of the retirement.

Ms. Dey (Basu) further argues that such deduction was arbitrary and illegal and the petitioner's case is squarely covered by the decision reported in **(2015) 4 SCC 344 [The State of Punjab and Ors. vs. Rafiq Masih (White Washer)]**. She relies on the conditions laid down in sub-paragraph nos. (i) to (v) of paragraph no. 18 of the said judgment wherein the recovery by the employers is held to be impermissible in law in the following conditions.

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

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

(iii) Recovery from the 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 case 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.”

She further submits, that not only the petitioner is a Group – ‘C’ employee but also the recovery of the excess amount has been made from an employee post retirement.

She prays for disbursement of the purported amount along with interest @ 10% p.a. from the date succeeding the date of retirement, i.e. November 29, 2014.

Ms. Sinha, learned counsel appearing on behalf of the employer/WBSMICL submits a report on affidavit.

The said report is retained with the records.

She submits that the fixation/enhancement of pay was *provisional* and *overdrawal*, if any could be recovered forthwith. The petitioner cannot maintain a case of recovery of an overdrawn amount that is wrongly granted to him.

Having considered the rival submissions of the parties and the materials placed on record, this Court finds that the petitioner was a Group-C employee. The recovery of the overdrawn amount was made post retirement during disbursement of the retiral dues that was done after almost 1 year from the date of his superannuation.

The petitioner is squarely covered by the ratio of the case of **Rafiq Masih** (supra).

The overpayment/overdrawn amount was not on account of any misrepresentation on the part of the petitioner.

However, this Court is of the view that the petitioner has approached belatedly and relying on the judgment in the case of **Union of India & Ors. Vs. Tarsem Singh** reported in

(2008) 8 SCC 648, this Court holds that the claim on account of interest due to belated payment of retiral dues should be restricted to 3 years prior to the date of filing of the writ petition. The petitioner should not be allowed to take advantage of his own laches in approaching of the Court at a belated stage and then praying for disbursement of the interest for the entire period.

The respondent authorities will pay interest @ 6% p.a. with effect from February 27, 2017 (being the date preceeding three years from the date of filing of the writ petition).

In the light of the discussions above, this Court finds that the petitioner will suffer extreme hardship if the overdrawn amount of Rs.89,483/- is not refunded to him.

Let the said amount be refunded to him within three months from date of the order.

Such accrued interest is payable within 3 months from the date of this order.

With the directions aforesaid, **W.P.A. 3537 of 2020** is **disposed of**.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of the formalities.

(Lapita Banerji, J.)