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jks 20.06.2023
Ct. no.22

WPA 4280 of 2018

Raj Kumar Das
Vs.
The State of West Bengal & Ors.

Mr. Biswarup Biswas
… … for the petitioner
Mr. Pinaki Bhattacharyya
… … for the respondent nos.1 to 9

This is a hearing matter upon completion of affidavits.

Today the respondent no.5 had filed its affidavit-in-opposition affirmed on March 18, 2019, the same is taken on record.

The petitioner filed its reply thereto affirmed on September 12, 2019, the same is also taken on record.

The petitioner retired as an assistant teacher from **Bolpur High School (H.S.), Birbhum**. In October 2016 the pension papers of the petitioner were sent to the office of the respondent no.3 – the jurisdictional District Inspector of Schools (in short, DI). Upon receipt of such pension documents from the relevant school, the DI on November 10, 2016 raised certain queries, **annexure P-9 at page 34 to the writ petition**. The school clarified the queries and sent it back to the DI immediately, **annexure P-9 at page 35 to the writ petition**. On January 3, 2017 the DI forwarded the claim of the petitioner for disbursement before the respondent no.5, **annexure P10 at page 36 to the writ petition**. On July 11, 2017 the jurisdictional Assistant Director, Pension, Provident Fund & Group Insurance raised its objection**, annexure P 11 at page 56 to the writ petition**. The said objection was sent to the DI from the office of the Assistant Director, Pension, Provident Fund & Group Insurance which in turn was sent for clarification before the relevant school authority. The headmaster of the school/ the school authority vide its communication dated July 25, 2017 duly clarified the queries and sent back to the office of the DI, **annexure P 12 at page 57 to the writ petition**. The petitioner then made its representation dated August 22, 2017 before the DI seeking preparation of its retiral benefits, **annexure P 13 at page 58 to the writ petition**. The petitioner ultimately **retired on August 31, 2017**.

Mr. Biswarup Biswas, learned counsel appeared for the petitioner submits that in the light of the above facts the petitioner after serving his employment career for about more than 30 years is now eligible to receive his superannuation benefits but the State employer on the alleged plea of **overdrawal amount** which **was raised for the**

first time on November 10, 2016 withheld the retiral benefit of the petitioner. He submitted that this alleged overdrawn amount was not received by the petitioner by practising any misrepresentation or fraud by the petitioner upon his employer. Drawing attention to paragraph 8 from the affidavit-in-opposition filed on behalf of the respondent no.5, Mr. Biswarup Biswas demonstrated that the State employer had also admitted that the alleged anomalies were due to wrong fixation of pay of the petitioner w.e.f. March 4, 2004. He submitted that for this alleged wrong fixation of pay scale there was no contribution made by the petitioner and the petitioner had no role to play at all. The petitioner at this juncture, after his retirement after serving the State employer for more than 30 years cannot made to suffer by not receiving his retiral benefit on the alleged ground of amount overdrawn by the petitioner. The quantum of overdrawn amount alleged by the State employer was Rs.2, 07, 308/- as would be evident from paragraph 8 of the affidavit-in-opposition filed on behalf of the respondent no.5.

Mr. Biswas then placed reliance upon the settled law as settled by the Hon'ble Supreme Court ***In the matter of : State of Punjab & Ors. – vs – Rafiq Masih reported in (2015) 4 SCC 334*** and submitted that in view of the guideline laid down specifically in paragraph 18 thereunder, the respondents in the facts and circumstances of this case cannot withhold the retirement benefit of the petitioner on the alleged ground of overdrawn amount. In addition, he referred to a judgment of a Co-ordinate Bench ***In the matter : of Sk. Estahar Ahmed versus The State of West Bengal, WPA 6991 of 2022*** and another judgment of a Co-ordinate Bench ***In the matter of Ommey Kulsum Mullick versus The State of West Bengal, WPA 14214 of 2015*** which are in sync with the law laid down by the Hon'ble Supreme Court ***In the matter : of Rafiq Masih (supra)***.

Learned counsel appeared for the petitioner submitted that the writ petition deserves to be allowed and the petitioner shall be paid his retiral benefit forthwith.

Mr. Pinaki Bhattacharyya, learned counsel appeared for the respondent nos.1 to 9 had drawn attention of this Court to the pleadings made in paragraph 11 of the affidavit-in-opposition affirmed on behalf of the respondent no.5 and submitted that no law has created any bar neither the service condition of the petitioner created any bar for realizing this overdrawn amount from the petitioner. Placing the reliefs claimed in the writ petition he submitted that, the petitioner had not challenged the decision of the State employer that due to the amount being overdrawn by the petitioner the retiral benefit was withheld. He submitted that, the State employer had rightly withheld the retiral benefit of the petitioner until the overdrawn amount is returned by the petitioner.

The rest of the respondents are not represented.

Considering the rival contentions of the parties argued before this Court and materials on record, it appeared to this Court that to decide the issue in the writ petition in the light of the law already settled on the **subject two dates are of extreme importance**. The DI for the **first time raised his query as to the amount allegedly overdrawn by the petitioner on November 10, 2016**. The second date is the **date of retirement** of the petitioner being dated **August 31, 2017**. The law laid down by the Hon'ble Supreme Court governing the field ***In the matter of : Rifiq Masih (supra)*** is now settled. The relevant observations from the said judgment is quoted below:-

"Paragraph 18 of ***"State of Punjab v. Rafiq Masih" (supra)*** is also required to be set out:

> **"18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:**
>
> ***(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 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."***

Inasmuch as, the law laid down by the two Co-ordinate Benches as referred to above ***In the matter of : Sk. Estahar Ahmed versus The State of West Bengal, WPA 6991 of 2022*** and ***In the matter of : Ommey Kulsum Mullick versus The State of West Bengal, WPA 14214 of 2015*** are also in sync with the ratio laid down by the

Hon'ble Supreme Court ***In the matter of : Rafiq Masih*** and this Court is in respectful agreement with those.

The demand and clarification was raised for the first time on November 10, 2016 and the petitioner having been retired on October 30, 2017, the demand/ clarification, thus, was raised from the retired employee who was at that point of time due to retire within one year from the attempt of recovery and accordingly the same is not sustainable in law.

Accordingly the impugned decision, **the pension payment order dated August 24, 2018, annexure C to the affidavit-in-opposition filed** on behalf of the respondent no.5 **stands set aside and quashed**.

The State respondents are directed to issue revised pension payment order without showing any amount to be recovered towards any alleged overdrawn payment to the petitioner forthwith but positively within a period of two weeks from the date of communication of this order.

The respondents are further directed to pay interest at the rate of 8 per cent per annum on the pensionary benefit as well as gratuity of the petitioner, excluding the amount which has already been paid and the calculation will have to be made as if there was no component on account of any amount allegedly overdrawn by the petitioner, till the date of issuance of the pension payment order from the date of retirement.

With the above observations and findings, this writ petition **WPA 4280 of 2018** stands allowed, without any order as to costs.

ACO

(Aniruddha Roy, J.)