Ct. No. 14 | 10.04 2023

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W.P.A. 6608 of 2023

Jnan Sankar Ghosh
–Versus-
The State of West Bengal & Ors.

Ms. Subhanwita Ghosh
Mr. Kaustabh Banerjee
Mr. Sagnik Bose
Mr. Pinak Mitra ...For the Petitioner

On 27th March, 2023 when the matter was taken up for hearing learned Counsel for the State respondents sought accommodation on the ground that he would seek necessary instruction from the concerned officials.

But, today there is no representation on behalf of the State respondents.

Accordingly, the writ petition is taken up for hearing in the absence of the state respondents.

I have heard learned Counsel appearing for the petitioner.

The petitioner retired from service on superannuation on 31st December, 2014 as a Librarian of Pragati Pathagar, Sundia Government Quarter, Jagaddal, North 24-Parganas. However, before his retirement, Pension Payment Order was issued in his favour on 5th December, 2014. But, the pensionary benefits including the gratuity were disbursed to him on 13th June, 2015.

During his service, the petitioner improved his qualification by obtaining degree in the Library and Information Science from Jadavpur University in the year 1989. On improving his qualification, his scale was supposed to be revised in accordance with law. Since the

Authority concerned did not grant higher scale of pay to him, the petitioner by filing a writ petition being W.P. 20724 (W) of 2015 sought for direction upon the respondent authorities to grant higher scale of pay commensurate with his higher qualification.

By order dated 5th April, 2016 the writ petition was disposed of by a learned Single Bench directing the Director of Library Services to dispose of the petitioner's representation by a reasoned order. But the authority concerned turned down his representation.

Aggrieved by the order of rejection of his prayer, the petitioner preferred another writ petition being W.P. 2419 (W) of 2017. By order dated 22nd December, 2017 the writ petition was disposed of by a learned single bench directing the respondent authorities to revisit the issue and pass a reasonable order. In compliance of this order the Director of Library Services by an order dated 18th December, 2018 allowed the prayer of the petitioner and he was granted the benefit of higher scale of pay and arrear revised salary. In terms of higher scale of pay revised Pension Payment Order was issued by the authority concerned in his favour on 10th February, 2022. It may be noted here that by virtue of the revised Pension Payment Order an amount of Rs. 1,22,180/- was deducted from the gratuity of the petitioner as overdrawn.

Now the petitioner seeks direction upon the respondent authorities to refund the deducted amount of Rs. 1,22,180/- and interest on the delayed payment of pensionary and other benefits.

Learned Counsel appearing for the petitioner submits that getting the pensionary benefits is the legal right of her client and the pensionary amount is his property. He further submits that had the petitioner received his pensionary benefits in time, the amount, which he would have received, would carry interest.

The amount which is due to the petitioner and the delay in disbursement of such amount as claimed by him may be depicted hereunder :-

"ISSUE	**AMOUNT**	**SCHEME**	**DUE ON**	**PAID ON**	**DELAY**
Pension Benefit (Gratuity + CVP)	**8,55,903**	**ROPA 2009**	**01.01.2015**	**13.06.2015**	**5 Months**
Leave Salary	**2,34,848**	**ROPA 2009**	**01.01.2015**	**29.06.2015**	**6 Months**
Revised Pension Benefit (Differential Amount)	**1,96,663**	**ROPA 2009**	**01.01.2015**	**02.04.2022**	**87 Months**
Arrear Pension	**2,79,604**	**ROPA 2009**	**01.01.2015**	**02.04.2022**	**87 Months**
Revised Leave Salary (Differential Amount)	**54,352**	**ROPA 2009**	**01.01.2015**	**22.04.2022**	**88 Months**
Overdrawn Amount (Principal Not Paid)."	**1,22,180**	**ROPA 2009**	**10.02.2022**	**NOT PAID**	**14 Months (Till Filing)**

In the absence of any averment to the contrary on behalf of the State respondents, it will be deemed that the averments as made by the petitioner particularising his claim at paragraph 15 shall be deemed to have been not denied.

It is now a settled proposition of law that to grant pensionary benefit to an employee, who retires from service giving his heyday to his/her employer is not the bounty of the Employer. Pensionary benefit is the property of an employee who retires from service.

As I find from the documents on record, the petitioner retired from service on 31st December, 2014. Though he was entitled to get higher scale of pay commensurate with his improved qualification, the concerned authority disallowed the claim made by him. Ultimately, by virtue of order dated 22nd December, 2017 passed by a learned Single Bench in W.P. 2419 (W) of 2017, the director of Library Services allowed the representation of the petitioner and granted higher scale of pay for improving higher qualification. In such backdrop, what I find, the deduction of Rs. 1,22,180/- as made by the authority concerned was so made long after the retirement of the petitioner.

In the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc.,*** reported in **(2015) 4 SCC 334** the Hon'ble Apex Court at paragraph 18 has held as heareunder :-

> ***"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."

Therefore, recovery of the aforesaid amount of Rs. 1,22,180/- by the authority concerned from the petitioner who retired long back is not permissible in law. As the averments in the writ petition and the documents on record suggest, there was a delay in payment of the pensionary and other benefits to the petitioner which are delineated as above.

Having heard the learned Counsel appearing for the petitioner and on consideration of the materials placed on record I find that the writ petition has merit to succeed.

Accordingly, the writ petition is allowed by passing the following order.

The concerned respondents are directed to refund the amount of Rs. 1,22,180/- to the petitioner within six weeks from the date of communication of this order.

The concerned respondents are also directed to pay interest at the rate of 8% p.a. on the delayed payment of pensionary benefits, gratuity etc., details of which are given at paragraph 15 of the writ petition to the petitioner from the dates when the amount fell due till the final payment is made also within six weeks from the date of communication of this order.

With the above direction the writ petition stands disposed of.

There will be no order as to costs.

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

Urgent photostat copy of the order, if applied for, be supplied to the appellant on priority basis on compliance of necessary formalities, on priority basis.

(Rabindranath Samanta, J.)