

11.06.2024
Sl. No.16
Suman
Ct.No.15

CPAN 1556 of 2023

Sandip Sarkar
Vs.
Govind Mohan, Secretary, Government of
India and Anr.

In

WPA 6266 of 2022

Sandip Sarkar
Vs.
Union of India and Ors.

Mr. Victor Chatterjee
..for the petitioner

Mr. Santanu Singha
Mr. Amit Kumar Roy
..for alleged contemnor no.1

It appears that by an order dated May 25, 2023 the Institute has deducted a sum of Rs.1,53,890.50/- from the salary of the petitioner. After retirement of the petitioner, such deduction was clearly impermissible in view of the judgment of the Hon'ble Supreme Court in Rafiq Masih reported at (2015) 4 SCC 334.

The relevant paragraph is quoted below:-

“**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."

In that view of the matter, the Institute shall refund a sum of Rs.1,53,890.50/- to the petitioner within a period of seven working days from the date of communication of this order.

List this matter after two weeks under the same heading when the alleged contemnor no.2 will produce the documents showing compliance of this order.

(Kausik Chanda, J.)