

71 10.5.2023
Sc Ct. no.22

WPA 7117 OF 2023

Srimatya Suchitra Singh

Vs.

The State of West Bengal & Ors.

Ms. Rama Halder

.... For the Petitioner

Mr. Pinaki Dhole

Mr. Pinaki Bhattacharyya.

.... For the State

Affidavit-of-service, filed in Court today, is taken on record.

The petitioner is the widow of one Jaharlal Singh, since deceased who was an Assistant Teacher retired from one ***New Barrackpore, Colony Boys High School (H.S.)***. The teacher died on March 27, 2016 during his employment tenure, Annexure-P1 at page 16 to the writ petition. The widow of the deceased teacher being the writ petitioner herein claimed payment of employment benefit of the deceased teacher. No heed was paid thereto by the State authority. The Provident Fund amount had been paid but the other dues were not.

Drawing attention to ***Annexure-P4 at page 22*** to the writ petition Ms. Rama Halder, learned advocate for the petitioner submitted that, on ***August 23, 2022*** the Deputy Director of Pension, Provident Fund & Group Insurance had informed that there was an alleged overdrawal during the period ***July 1, 2013 till July 1, 2015*** on account of the said deceased teacher, hence, the

other retiral benefits including pension could not be processed on account of the deceased employee. Drawing attention to ***page 31 to the writ petition*** which was a ***communication dated February 28, 2023***, learned advocate for the petitioner submitted that, the respondent no.4 informed the petitioner that, in view of the objection of the Director of Accounts as recorded above, the application of the petitioner to receive ***family pension*** was returned. The petitioner raised its demand through a letter dated ***February 21, 2023, Annexure-P5 at page 25 to the writ petition.***

Mr. Pinaki Bhattacharyya, learned advocate appearing for the respondent nos. 1 to 4 and 6 submitted that, since the overdrawal amount had not been returned by the petitioner and until the same is returned, the pension account cannot be processed and as a result, the petitioner is not entitled to receive pension on account of her deceased husband.

After considering the rival contentions raised on behalf of the appearing parties and upon perusal of the materials on record it appeared that, the alleged overdrawal period was from ***July 1, 2013 till July 1, 2015.***

The alleged observation of overdrawal was made by the Deputy Director of Pension, Provident Fund & Group Insurance and the objection was raised on August 23,

2022 which was after at least seven to nine years from the alleged incidence of overdrawal.

On the basis of such objection the respondent no.4 refused to prepare and regularise the pension account of the petitioner on account of her deceased husband on February 28, 2023 which was at least 8 to 10 years after the said alleged overdrawal.

The law is well settled by the Hon'ble Apex Court ***in the matter of : State of Punjab and Others –vs.- Rafiq Masih (White Washer) and Others, reported at (2015) 4 SCC 334.***

The Hon'ble Supreme Court in the above dictum had observed as under :

“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 employees, 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 be far outweigh the equitable balance of the employer's right to recover."*

For the foregoing reasons and discussions the ***decision/communication of the respondent no.4 dated August 28, 2023 at page 31 to the writ petition cannot sustain in law and, accordingly, the same stands set aside and quashed.***

In view of the above, the respondent no.4 shall communicate the respondent no.3 to issue the necessary ***Pension Payment Order*** positively within a period of two weeks from the date of communication of this order.

The respondent no.3 in turn shall issue the necessary ***Pension Payment Order*** in favour of the petitioner positively within a period of two weeks from the date of receiving such communication from the respondent no.4.

The respondent no.3 shall then immediately communicate the said ***Pension Payment Order*** to the respondent no.6 positively within a period of three days from the date of issuance of the ***Pension Payment Order*** in favour of the petitioner.

Upon receiving such ***Pension Payment Order*** from the respondent no.3 the respondent no.6 shall

immediately upon receiving the bank account detail from the petitioner shall disburse and pay off and start continuing to pay the necessary family pension and gratuity in terms of the **Pension Payment Order** positively within a period of seven days from the date of receipt of the said **Pension Payment Order** from the respondent no.3 from the date of death of the deceased teacher, i.e., **March 27, 2016 till today, i.e. May 10, 2023**. The respondent no.3 shall pay interest @8% per annum on the arrear amount payable to the petitioner and **in default** shall pay the additional 2% interest per annum on the arrear.

It is made clear that, there shall not be any default in paying current family pension payable to the petitioner in accordance with law.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms this writ petition, **WPA 7117 of 2023** stands allowed, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)