

Court No. 22
05.10.2023
(Item No. 23)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 5583 of 2018

Nandita Paul
VS
The State of West Bengal & Ors.

Mr. Ayan Banerjee
Ms. Debasree Dhamali
Ms. Riya Ghosh
..... for the petitioner
Mr. Pinaki Bhattacharya
.... For respondent Nos. 1 to 4.

Mr. Ayan Banerjee, learned counsel, appears
for the petitioner.

Mr. Pinaki Bhattacharya, learned counsel
appears for respondent Nos. 1 to 4.

Mr. Ayan Banerjee, learned counsel submits
that, except an alleged overdrawal amount to the
extent of **Rs.94,391/-** in respect of the deceased
father's retiral benefit on account of the House Rent
Allowance components, all other payments with
interest as directed by this Court as also by the
previous co-ordinate bench have been paid and the
petitioner being the legal heir of the deceased
employee has received the same.

Today the limited issue was raised before this
Court with regard to the said alleged overdrawn
amount of Rs.94,391/-.

The relevant facts are that, the deceased employee retired on **October 31, 2010** as would be evident from **page 31** to the supplementary affidavit affirmed by the petitioner on January 12, 2021. The father of the petitioner who was the State employee died on **June 1, 2014** as would be evident from **Annexure P-11** at **page 47** to the writ petition. The State employer raised the claim for the first time on the alleged overdrawn amount on **December 7, 2018** as would be evident from **page 31** to the said supplementary affidavit.

These facts are admitted and not denied by the learned State counsel also as they are on record.

The law is well settled by the Hon'ble Supreme Court ***In the matter of: State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported at (2015)4 Supreme Court Cases 334.***

The relevant observation of the Supreme Court ***In the matter of: Rafiq Masih (Supra)*** 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 view of the law as referred to above, laid down by the Hon'ble Supreme Court the State employer cannot withhold the said alleged overdrawn amount of **Rs.94,391/-** any further. Accordingly, the respondent No. 4 shall take steps immediately but positively within a period of **three weeks** from the date of communication of this order to process and send its recommendation for payment for the said sum of **Rs.94,391/- along with interest @ 8% per annum** since **November 1, 2010 (as the employer retired on October 31, 2010)** till the date of actual **tendering of payment** to the petitioner and not beyond that to the added respondent No. 7.

The added respondent No. 7 then shall release and pay the amount to the petitioner as per the bank details to be furnished by him positively within a period of **two weeks** from the date of receiving the recommendation from the respondent No. 4.

With the above observations and directions this writ petition **W.P.A. 5583 of 2018** stands allowed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)