

Ct. 26.04
No. 14 2023
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W.P.A. 8694 of 2023

Md. Rafiqul Islam
-Versus-
The State of West Bengal & Ors.

Mr. Narayan Chandra Mandal
Ms. Anushika Bharati ...For the Petitioner

Mr. Debabrata Mandal
Mr. Manas Kundu ...For the State Respondents

Supplementary affidavit filed on behalf of the petitioner be kept on record.

The writ petitioner retired from service on superannuation as a librarian of Nazrul Sukanta Pathagar, District – South 24-Parganas on 30th April, 2011. After his retirement the first Pension Payment Order was issued in his favour on 14th June, 2011 and he got pensionary benefits in terms of first Pension Payment Order. Thereafter, revised Pension Payment Order was issued to him on 11th January, 2022.

After he received the revised Pension Payment Order, the petitioner became astonished to know that an amount of Rs. 60,455/- was shown as overdrawal and the amount was deducted from his pensionsary benefits.

The petitioner submits that before deducting the aforesaid amount, no opportunity of hearing was ever given to him. He further submits that the authority cannot deduct the aforesaid amount from a retired person like the petitioner. Under such circumstances, the petitioner seeks direction upon the respondent authorities to refund the aforesaid amount of Rs. 60,455/- with interest thereon.

Learned Counsel appearing for the petitioner by

referring to a decision in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer)* reported in (2015) 4 SCC 334 submits that no amount can be deducted from the pensionary benefits of a pensioner.

In the decision in the case of *Rafiq Masih (White Washer (Supra))* the Hon'ble Apex Court at paragraph 18 has held as under:-

“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."

In view of the mandate as declared by the Hon'ble Apex Court, the respondent authorities cannot deduct the aforesaid amount of money from a retired person out of his retiral benefits.

Having heard the learned Counsels appearing for the parties and in view of the decision as supra, I think that the writ petition has merit to succeed and accordingly the writ petition is allowed on contest.

The concerned respondent, especially the respondent No. 5, the Treasury Officer, Barasat-II, District – North 24-Parganas is directed to refund the deducted amount of Rs. 60,455/- with interest thereon at the rate of 8% p.a. from the date when it was recovered till the date of payment, within six weeks from the date of communication of this order.

With the aforesaid directions 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 petitioner on priority basis on compliance of necessary formalities, on priority basis.

(Rabindranath Samanta, J.)