Court No. 22
26.9.2023
(Item No. ML-45)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 10019 of 2018

Sashanka Patra
VS
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. S. M. Ali
Mr. T. Basak
Sk. Imtiaj Uddin
..... for the petitioner

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

None appears for the respondents despite notice.

The petitioner was working as **"Clerk"** at one **Mithani High School, District – Burdwan**. From the averments made by the petitioner in **paragraph 3** of the writ petition it appears that, the petitioner has retired with effect from **March 31, 2017**. Several orders were passed in the writ petition from time to time on previous occasions.

At the time of preparation of the pension papers for the petitioner the respondent No. 6 raised a query with regard to the alleged overdrawn amount by the petitioner. The communication was signed by the respondent No. 6 on **September 19, 2016** at **page 31** to the writ petition and it was communicated by the forwarding letter which was signed by the respondent No. 3 on **November 2, 2016, Annexure P-3** at **page 30** to the writ petition.

Mr. Ekramul Bari, learned counsel for the petitioner submits that, since the petitioner has retired on **March 31, 2017** as pleaded in **paragraph 3** to the writ petition, the queries and/or alleged demands on the ground of overdrawn against the petitioner as would be evident from **pages 30 and 31** to the writ petition were not beyond one year of the date of retirement of the petitioner.

Mr. Bari has referred to the law laid down by the Hon'ble Supreme Court ***In the matter of: State of Punjab & Ors. – Vs.- Rafiq Masih reported at (2015) 4 SCC 334*** and submitted that, in view of the guideline laid down specifically in **paragraph 18** there under, the respondents in the facts and circumstances of this case cannot withhold the retiral benefits of the petitioner on the alleged ground of overdrawn amount.

Mr. Bari submits that, the writ petition deserves to be allowed.

Despite notice the respondents chose not to be represented.

Considering the submissions made on behalf of the petitioner and considering the materials on record, it appeared to this Court that, to decide the issue in the writ petition in the light of the law already settled as referred to above the **two dates** are of extreme importance. The **first date** being the date of retirement as **March 31, 2017** and the **second date** being the **first demand** raised by the State authority on account alleged overdrawn being dated **September 19, 2016** as discussed above.

The law laid down by the Hon'ble Supreme Court ***In the matter of: Rafiq Masih (Supra)*** is now well settled. The relevant observations from the said judgment is quoted below:

"Paragraph 18 of "State of Punjab v. Rafiq Masih" (supra) is also required to be set out:

"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."

The demand for clarification was raised for the first time on **September 19, 2016** and the petitioner retired on **March 31, 2017**, the demand/clarification, thus, was raised by the State employer regarding the retired employee who was at that point of time due to retire within one year from the date of the said first demand/query and accordingly the same is not sustainable in law.

Accordingly, the impugned decision/query/ demand dated **September 19, 2016** issued by respondent No. 6 at **page 31** and the consequential forwarding letter dated **November 2, 2016** bearing **memo No. 226** being **Annexure P-3 at pages 30 to 32** to the writ petition stands **quashed and set aside**.

The State respondents and/or the respondent Nos. 3 and 4 are directed to take all necessary and consequential steps for issuing the revised Pension Payment Order (revised PPO) without showing any amount to be recovered towards any alleged overdrawn payment to the petitioner forthwith but positively within a period of **four weeks** from the date of communication of this order. The respondents are further directed to pay interest @ **8% per annum** on the pensionery benefit as well as gratuity payable to the petitioner, excluding the amount which has already been paid, if any, and the calculation will have to be made, as if, there was no component on account of any amount of alleged overdrawn by the petitioner since the date of retirement **i.e. March 31, 2017** till the date of issuance of the revised Pension Payment Order and not thereafter.

With the above observations, directions and findings this writ petition being **W.P.A. 10019 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.)