

21.09.2023
DL-109
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13762 of 2023

Anath Kumar Bauri
Vs.
The State of West Bengal & Ors.

Mr. Uttam Kumar De,
Ms. Ankita Mukherjee

...for the petitioner.

Mr. Suddhadev Adak

....for WBSMICL.

Mr. K. N. Nabi,
Ms. Tanuja Basak

...for the State.

Written instructions as handed over in Court today are retained with the records.

It appears from the said written instructions that the undertaking sought to be handed over by West Bengal State Minor Irrigation Corporation Limited (WBSMICL) is a blank undertaking.

In any event the said undertaking, if at all, is in respect of the revised pay structure with effect from January 1, 2016 and does not have any co-relation with the grant of Modified Career Advancement Scheme (MCAS), 2001, benefits given to the petitioner. It is recorded in the impugned order dated January 18, 2019 issued by the Managing Director, WBSMICL that the petitioner was wrongly awarded the MCAS benefits of 16 years with effect from June 1, 2001 and for 25 years with effect from July 1, 2007. Such benefits were not in conformity with the Finance Department's G.O. dated March 13, 2001.

How an option form regarding pay structure with effect from January, 2016 aids the Corporation in recovery of the purported *overdrawn amount*, is beyond the comprehension of the Court.

The petitioner was working as an Operator of the West Bengal State Minor Irrigation Corporation Limited (in short, “**WBSMICL**”). The petitioner was superannuated from his service on July 31, 2018. He was a Group ‘C’ employee. From the retiral benefits due and payable to the petitioner, a sum of Rs. 80,597/- was deducted on the ground of the same being overdrawn by the petitioner.

Mr. De, learned counsel appearing on behalf of the petitioner submits that the petitioner has suffered extreme hardship due to the deduction of the purported overdrawal amount post retirement.

Mr. De further argues that such deduction was arbitrary and illegal and the petitioner’s case is squarely covered by the decision reported in **(2015) 4 SCC 344 [The State of Punjab and Ors. vs. Rafiq Masih (White Washer)]**. He relies on the conditions laid down in sub-paragraph nos. (i) to (v) of paragraph no. 18 of the said judgment wherein the recovery by the employers is held to be impermissible in law in the following conditions:

“(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 case 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."

He further submits, that not only the petitioner is a Group – 'C' employee but also the recovery of the excess amount has been made from an employee post retirement.

Mr. Adak, learned counsel appearing on behalf of the employer/WBSMICL submits that the petitioner's case is different from that of **Rafiq Masih** (supra). He relies on the Circular dated July 14, 2010 issued by the Managing Director, WBSMICL in support of his contentions that pay fixation/enhancement of the pay was 'provisional' and 'overdrawal', if any could be recovered forthwith. He submits that since it was made unequivocally clear by the Memo dated July 14, 2010 that the benefits are provisional and overdrawal can be recovered, the petitioner cannot maintain a case against recovery of an overdrawn amount that was wrongly granted to him.

Having considered the rival submissions of the parties and the materials placed on record, this Court finds;

- (a) the petitioner is squarely covered by the ratio in the case of **Rafiq Masih** (supra).
- (b) The petitioner was a Group-‘A’ employee.
- (c) The recovery of the overdrawn amount was made post retirement.
- (d) Reliance is placed by this Court on the Division Bench Judgment in the case of **West Bengal State Minor Irrigation Corporation Ltd. & Ors. Vs. Pradosh Kumar Kundu in M.A.T. No. 750 of 2022.**
- (e) It is also not lost upon this Court that the overpayment/overdrawal made to/by the petitioner was not on account of any misrepresentation by the petitioner relying on **Sahib Ram vs. State of Haryana and Ors.** reported in 1995 Supp (1) SCC 18.

This Court holds that all the conditions of **Rafiq Masih** (supra) can be read distinctively to determine whether an overdrawal amount can be recovered from an employee who is neither represented nor committed any fraud for payment of such amount. Reliance is placed on Apex Court decision reported in 1995 Supp (1) SCC 18 (**Sahib Ram vs. State of Haryana and Ors.**).

In the light of the discussions above, this Court finds that the petitioner who has superannuated from service on July 31, 2018 will suffer extreme hardship in the event the said amount of Rs.80,597/- is not

paid to him. The deduction of the amount for being overdrawn has already caused hardship to the petitioner.

The respondent authorities are directed to pay the said overdrawn amount of Rs.80,597/- along with the interest @ 6% p.a. from August 1, 2018 till the disbursal of the entire dues to the petitioner within a period within six weeks from date of this order.

The petitioner will be entitled to retiral benefits to the tune of Rs.9,93,788/-. Such payment will be made within eight weeks from date along with interest calculated @ 6% per annum from August 1, 2018 (date subsequent to the date of retirement) till the disbursal of the entire amount.

With the directions aforesaid, **WPA 13762 of 2023** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)