21.09.2023
DL-110
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13769 of 2023

Tapati Mondal & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Uttam Kumar De,
Ms. Ankita Mukherjee
...for the petitioner.
Mr. Suddhadev Adak
....for WBSMICL.
Mr. Jayanta Samanta,
Mr. Manas Kumar Sadhu
...for the State.

The petitioners are the heirs and legal representatives of a deceased employee of West Bengal State Minor Irrigation Corporation Limited (WBSMICL).

The petitioner no.1's husband worked as an Operator. He was superannuated from service with effect from April 30, 2018. He died on October 18, 2019.

By a memo dated July 25, 2019, the Managing Director, WBSMICL sought to recover an amount of Rs.2,26,373/- as *overdrawn amount* from the retiral benefits of the deceased employee.

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

He further argues that such deduction was arbitrary and illegal and the petitioners' 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 no.1's husband 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 petitioners' 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 petitioners cannot maintain a case against recovery of an overdrawn amount that was wrongly granted to the employee.

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

(a) the petitioners are squarely covered by the ratio in the case of **Rafiq Masih** (supra).

(b) The petitioner was a Group-'C' 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 petitioners was not on account of any misrepresentation by the petitioners 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 no.1's husband who has superannuated from service on April 30, 2018 will suffer extreme hardship in the event the said amount of Rs.2,26,373/- is not paid to the petitioners. The deduction of the amount for being overdrawn has already caused hardship to the petitioners.

The respondent authorities are directed to pay the said overdrawn amount of Rs.2,26,373/- along with the interest @ 6% p.a. from May 1, 2018 (the date succeeding the date of retirement) till the disbursal of the entire dues to the petitioners within a period within six weeks from date of this order.

Furthermore, the retiral benefits amounting Rs.9,81,904/ of the petitioner no.1's husband was paid on August 20, 2019, that is after more than 1 year from the date of his superannuation.

Therefore, the petitioners pray for interest on the delayed disbursal of the retiral dues.

The petitioners will be entitled to interest @ 6% per annum from May 1, 2018 (the date succeeding the date of retirement) till August 20, 2019 when the sum of Rs.9,81,904/- was disbursed to the petitioner no.1's husband.

The respondent authorities are directed to pay interest @ 6 p.a. from May 1, 2018 (the date succeeding the date of retirement) till August 20, 2019 when the sum of Rs.9,81,904/- was disbursed to the petitioner no.1's husband.

With the directions aforesaid, **WPA 13769 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.**)