28.8.2023
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WPA 13895 of 2023

Sibsundar Samanta
Vs.
The State of West Bengal & Ors.

Ms. Subhanwita Ghosh
Ms. Saachi Aggarwal
… For the petitioner.

Ms. Tapati Samanta
Mr. Arindam Ghosh
… For respondent no. 5.

Mr. Jayanta Samanta
Ms. Ashmita Chakraborty (Ghosh)
… For the State.

The petitioner has filed written notes of arguments. The same may be kept with the records.

The petitioner in this case has challenged the action of the State in recovering an excess payment of amount of Rs. 1,39,354/- by an order dated February 10, 2022. The petitioner submits that after his retirement such recovery was made in violation of settled proposition of law laid down by the Supreme Court in the case reported at **(2015) 4 SCC 334 (State of Punjab vs. Rafiq Masih).**

After hearing the matter upon exchanging of affidavits, I am of the view that this is not a case where this order of the recovery should be interfered with.

The undisputed facts involved in this case are as follows:

The petitioner acquired a higher qualification in the year 1989 but his prayer for giving incremental benefits on acquiring such higher qualification was rejected by the State by an order dated November 22, 2016.

The petitioner challenged the said order of rejection by filing a writ petition before this Court. A Coordinate Bench of this Court directed the State to revisit the issue. Ultimately, in compliance with the said order of the Coordinate Bench, the District Library Services, West Bengal allowed the prayer by an order dated June 15, 2018.

The petitioner retired from service on September 30, 2018.

His Pension Payment Order was issued on November 12, 2018. In issuing the said Pension Payment Order, the State did not give him the incremental benefit to which he was entitled to in terms of the order dated June 15, 2018.

Subsequently, by a memo dated December, 10, 2020, the pension paper of the petitioner was submitted to the Director of Pension, Provident Fund and Group Insurance for his revised pension in terms of the said order dated June 15, 2018.

Unfortunately, at the time of submission of the relevant documents for issuance of revised pension, there was an error of calculation. A sum of Rs. 12,24,764/- was calculated as the arrear dues of the petitioner while the petitioner was entitled to a sum of Rs. 10,85,410/- as his arrear dues.

By this way, the petitioner was paid a sum of Rs. 1,39,354/- in excess of his actual entitlement. Subsequently, by memo dated February 10, 2022, issued by the Director of Pension, Provident Fund and Group Insurance, the relevant Treasury Officer was directed to make the payment after adjustment of said sum of Rs. 1,39,354/-.

Thereafter, the necessary papers of the petitioner for his revised Pension Payment Order as per ROPA 2019 were submitted by the relevant District Library Officer to the office of Director of Pension by a letter dated May 24, 2022. As per ROPA- 2019 pensionary benefit of the petitioner was revised and a revised Pension Payment Order was issued on July 26, 2022 in favour of the petitioner.

The affidavit filed by the State clarified that the monthly basic pension was erroneously calculated as Rs. 25,560/- but after rectification the amount was revised as Rs. 25,000/-. In total an excess of Rs. 1,39,354/- was calculated for the period from November 18, 1989 to September 30, 2018.

The aforesaid facts make it absolutely clear that the State committed a mistake in making the arrear calculation payable to the petitioner pursuant to the order dated June 15, 2018 passed by the Director of Library Services, West Bengal.

The petitioner, during his service period, was not paid any incremental benefits for acquiring higher qualification. The same was paid by way of making an arrear calculation after his retirement. The State sought to recover the excess amount of Rs. 1,39,354/- from the said arrear dues payable to the petitioner.

The law related to recovery of the excess amount is founded on an equitable principle. An amount which has been paid to an employee inadvertently in excess of his legitimate entitlement during his service career has been prohibited to be recovered by the Supreme Court in **Rafiq Masih** case in the following circumstances.

> "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."

This case does not relate to a recovery of excess amount paid during the service period of the petitioner. It is a case where the State has rectified its mistake in computing the arrear calculation of the petitioner after his retirement. The petitioner can claim no equity in such a case and insist that he should be given the benefit of an erroneous calculation.

In that view of the matter, I find no merit in this writ petition. The State was justified in rectifying its arrear calculation.

Accordingly, **WPA 13895 of 2023** is dismissed.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)