28.8.2023
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WPA 13926 of 2023

Gouranga Karmakar
Vs.
The State of West Bengal & Ors.

Mr. Sagnik Bose
Mr. Pinak Kumar Mitra
Ms. Subhanwita Ghosh
… For the petitioner.

Ms. Tapati Samanta
Mr. Arindam Ghosh
… For the State.

The petitioner has filed a written note 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 Rs. 2,60,99/- by an order dated February 10, 2022. The petitioner submits that after his retirement the recovery was made in violation of the law laid down by the Supreme Court in the judgment reported at **(2015) 4 SCC 334 (State of Punjab vs. Rafiq Masih).**

The undisputed facts involved in this case are as follows:

The petitioner had retired from service on August 31, 2016. His prayer for giving incremental benefits on acquiring a higher qualification in the year 1985 was rejected by the State by an order dated October 17, 2016.

The petitioner challenged the said order 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 State allowed the prayer by an order dated May 30, 2018.

Significantly, his Pension Payment Order was issued on October 21, 2016 without giving him the benefit of the order dated May 30, 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 May 30, 2018.

Unfortunately, at the time of submission of the relevant documents for issuance of revised pension, an error of calculation crept in. A sum of Rs. 13,42,138/- was calculated as the arrear dues, while the petitioner was entitled to a sum of Rs. 10,81,159/-.

By this way, the petitioner was paid a sum of Rs. 2,60,979/- 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 the adjustment of said sum of Rs. 2,60,979/-. 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 10, 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 of the petitioner was erroneously calculated as Rs.26,930/- but after rectification, the amount was revised as Rs. 25,850/-. Thus, Rs.2,60,979/- was paid to the petitioner for the period from March 12, 1987 to August 31, 2016.

The petitioner, during his service period, was not paid anything on account of acquiring his qualification. The same was paid by way of an arrear after his retirement and the State sought to recover Rs.2,60,979/- from the said arrear dues as excess amount.

The Supreme Court in **Rafiq Masih's** case (supra) has laid down the following principle of law relating to recovery of excess amount after retirement:

> "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:
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> (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 above guidelines have been framed as an equitable measure. This case does not relate to a recovery of an excess amount paid during the service. It is a case where the State has rectified its mistake in making the arrear calculation of an employee after his retirement. The petitioner can claim no equity in such case and cannot 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 and therefore, no interference is called for.

Accordingly, **WPA 13926 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.)