

**HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Shekhar B. Saraf, J.

WPA 14136 of 2018

**Prasanta Kumar Ghana
-versus-
The State of West Bengal & Ors.**

For the Petitioner : **Mr. Sourav Mitra
Ms. Sreyasree Choudhury**

For the State : **Mr. Aish Kumar Guha
Mr. Anirban Dutta**

For the Respondent No.7 : **Mr. Suman Basu**

Heard On : **September 20, 2023.**

Judgement On : **September 20, 2023.**

Shekhar B. Saraf, J.

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the document of the respondent authorities for adjustments of overdrawn amount after his retirement.

The facts of the case are that in 2014 it came to light that certain amounts were to be overdrawn by the employee and the employee gave an assurance for deduction from his salary on November 26, 2014 for the purpose of adjusting the

said overdrawn amount. This overdrawn amount was adjusted by June 31, 2016. The petitioner subsequently retired in the month of January 2017.

By a letter dated October 11, 2017, the authorities once again sought for adjustment of overdrawal amount stating that they had committed error in the overdrawal amount and further amounts were to be deducted.

It is to be noted that the Supreme Court in the catena of judgments including the case of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** reported in **(2015) 4 SCC 334** has stated overdrawn amount cannot be adjusted after the retirement of Group-C or D employee. The relevant paragraphs of the said judgment are delineated hereinbelow:-

“17.....

It would be pertinent to mention, that Librarians were equated with Lectures, for the grant of the pay scale of Rs 700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class MA, MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification). For those Librarians appointed prior to 3-12-1972, the educational qualifications were relaxed. In Sahib Ram case, a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the appellants concerned were ineligible for the same. The appellants concerned were held not eligible for the higher scale, by applying the principle of equal pay for equal work”. This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

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 required 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.

19. *We are informed by the learned counsel representing the appellant State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.*

20. *The appeals are disposed of in the above terms."*

Keeping in mind the above judgments of the Supreme Court, the letter dated October 11, 2017 is quashed and set aside.

The amount has already been deducted by the respondent authorities. Accordingly, prayer (b) of the writ petition is allowed and the respondents are directed to refund the entire sum of Rs.67,377/- along with interest at the rate of

9% per annum to the petitioner from the date of his retirement within a period of eight weeks from date.

With these above directions, WPA 14136 of 2018 is disposed of.

All parties are to act on the website copy of this order.

(Shekhar B. Saraf, J.)