24.8.2023
Item No.62
Court No.22
A.B.

W.P.A. 24988 of 2017

Madan Mohan Mandal
-Vs-
The State of West Bengal & Ors.

Mr. Uttam Kumar Roy
.....for the petitioner.

Mr. Ranjan Saha
.....for the State.

The previous order speaks for itself.

Today, the writ petition appeared under the heading **"For Dismissal".**

Affidavit of service filed in Court today is taken on record.

The petitioner was the Assistant Teacher of a Higher Secondary School; on **October 31, 2000**, he retired from his service on superannuation.

The petitioner from his pension payment order found that a sum of **Rs.26,607/-** was deducted from his retiral benefit on the ground of overdrawal in pay and allowances.

The relevant Pension Payment Order, **Annexure P-1** at **page 11** to the writ petition depicts that, the pension has commenced with effect from **November 1, 2000**. The Pension Payment Order was issued on **December 20, 2001**. From the Pension Payment Order for the first time the petitioner came to learn as to the alleged overdrawn amount of **Rs.26,607/-.**

The petitioner by the instant writ petition is praying refund of the said amount with interest from the date of his retirement.

There is nothing on record to suggest that the petitioner was responsible for the payment of such amount.

In view of the several decisions of the Hon'ble Supreme Court e.g ***SHYAM BABU VERMA –VS- UNION OF INDIA*** reported in **(1994) 2 SCC 521**; ***UNION OF INDIA & ORS. –VS- TARSEM SINGH*** reported in **(2008) 8 SCC 648** and ***STATE OF PUNJAB & ORS. -VS– RAFIQ MASIH (WHITE WASHER) & ORS.*** reported in **(2015) 4 SCC 334**, the issue whether such overdrawn amount can be adjusted against the retiral benefits of an employee is no longer *res integra*.

However, to clarify the issue, paragraph '18' of the decision of the Hon'ble Supreme Court in the case of ***Rafiq Masih*** **(supra)** is quoted below :-

> "**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 II 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."

In view of the discussion made above, this Court is of the opinion that the petitioner is entitled to the relief as prayed for.

Accordingly, the concerned Director of Pension, Provident Fund and Group Insurance, Government of West Bengal and also the concerned Treasury Officer are directed to release the said amount of Rs.26,607/- along with interest @8% per annum thereon in favour of the petitioner from the date of issuance of the pension payment order till the date of payment, such payment is to be made within a period of eight weeks from the date of communication of this order.

W.P.A. 24988 of 2017 is disposed of with the terms. There shall however be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Aniruddha Roy, J.)