18.09.23
108 Ct. No.25
Sws.M

WPA 25660 of 2022

Pradip Kumar Dutta
vs.
The State of West Bengal & Ors.

Mr. Sarbananda Sanyal
Ms. Poulami Chakraborty
...for the petitioner
Mr. Suddhadev Adak
...for the respondent

Despite learned advocate appearing for the petitioner trying to serve on the State-respondents in terms of orders passed by this Court. The State-respondents have refused to accept the notice of the writ petition and also chosen not to represent themselves in Court today. Such a state of affairs, is indeed unfortunate.

However, this Court cannot make a litigant suffer indefinitely since the State-respondents have chosen not to appear.

The petitioner was a Group- 'C' employee of the West Bengal State Minor Irrigation Corporation Limited (in short, "WBSMICL"). The petitioner was superannuated from his service on November 30, 2018. The retiral benefits of the petitioner was belatedly paid on August 05, 2019. From the retiral benefits due and payable to the petitioner, a sum of Rs.2,58,852/- was deducted on the ground of the same being overdrawn by the petitioner.

Mr. Sanyal, learned counsel appearing on behalf of the petitioner submits that not only the petitioner has suffered extreme hardship due to the deduction of the purported overdrawal amount post retirement but also suffered hardship because of the belated disbursement of the retiral dues.

Mr. Sanyal further argues that such deduction was arbitrary and illegal and the petitioner's 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 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 petitioner's 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 her 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 petitioner cannot maintain a case against recovery of an overdrawn amount that was wrongly granted to him.

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

(a) the petitioner is 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 the petitioner was not on account of any misrepresentation by the petitioner relying on **Sahib Ram vs. State of Haryana and Ors.** reported in **1995 Supp (1) SCC 18**.

In the light of the discussions above, this Court finds that the petitioner who has superannuated from service on November 30, 2018 will suffer extreme hardship in the event the said amount of Rs.2,58,852/- is not paid to him. The deduction of the amount for being overdrawn has already caused hardship to the petitioner. Furthermore the petitioner suffered extreme hardship due to belated payment of retiral dues.

The respondent authorities are directed to pay the said overdrawn amount of Rs.2,58,852/- along with the interest @ 6% p.a. from December 1, 2018 (being the date succeeding the date of retirement) till the date of actual payment within six weeks from date to the petitioner.

The petitioner will be entitled to interest @ 6% p.a. on the sum of Rs.11,05,898/- from December 1, 2018 (being the date succeeding the date of retirement) till August 5, 2019 (being the date when the said amount was released to the petitioner).

With the directions aforesaid, **W.P.A. 25660 of 2022** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J)