

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

W.P.S.T.233 of 2016

**Sukumar Dutta
VS.
The State of West Bengal & ors.**

For the Writ Petitioner : Mr. Tulshidas Ray,
Mr. Tapan Ray,
Mr. Tirthankar Roy

Hearing concluded on : 12.07.2023

Judgment on : 12.07.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated February 7, 2014 passed in O.A.1435 of 2012 where, the claim of the writ petitioner for refund of amount deducted from gratuity on account of alleged overdrawal, was negated.

2. Learned advocate appearing for the writ petitioner submits that, at the time of the retirement of the writ petitioner and in fact, at the time of payment of gratuity, it was claimed that, the writ petitioner overdrew salary for the period from January 15, 1989 to July 31, 2009 aggregating to a sum of Rs.1,75,516/-. He draws the attention of the Court to the letter dated August 11, 2011 by which the retiral benefits of the writ petitioner was being fixed and which contains the claim of Rs.1,75,516/-. He submits that, such writing does not contain reasons as to why the authorities arrived at the finding of overdrawal. In any event, the authority did not claim that the writ petitioner connived with the authorities to receive any excess salary.

3. Learned advocate appearing for the writ petitioner relies upon **(2015) 4 Supreme Court Cases 334 (State of Punjab & ors. vs. Rafiq Masih [White Washer] and others)** and submits that, the writ petitioner falls within the category of exceptions noted therein. The amount allegedly overdrawn was not required to be adjusted from the retiral benefits receivable

by the writ petitioner. The Tribunal erred in not considering such settled position in law.

4. Learned advocate appearing for the writ petitioner relies upon a decision of the coordinate Bench rendered in W.P.S.T.25 of 2015 on April 27, 2015 (**Asitosh Bhattacharya vs. State of West Bengal and ors.**) 2015 SCC Online Cal 5883 and submits that, **Rafiq Masih (White Washer)** was considered by the coordinate Bench and relief granted.

5. The writ petitioner superannuated from service. On his superannuation, he was entitled to his retiral benefits. An exercise to fix the quantum of retiral benefits were undertaken by the authorities. There is a letter dated August 11, 2011 which is of the view that the writ petitioner overdrew a sum of Rs.1,75,516/- on account of salary.

6. The letter dated August 11, 2011 does not contain any details of the alleged overdrawal. It does not specify the grounds on which the overdrawal was allegedly made.

7. We are not favoured with the appearance of any advocate for the State to assist us on the aspect as to the reason why the overdrawal was alleged by the authorities, despite learned

advocate for the State entering appearance on the previous occasion.

8. On perusal of the impugned order, we find that the Tribunal proceeded on the basis of decision of Hon'ble Supreme Court reported in **(2012) 8 SCC 417 (Chandi Prasad Uniyal and ors. v. State of Uttarakhand and ors.)** in denying the claim of the writ petitioner.

9. **Chandi Prasad Uniyal (supra)** was considered in **Rafiq Masih (White Washer) (supra)**. In **Rafiq Masih (White Washer)** the Supreme Court observed as follows:-

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class -III and Class -IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from 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.”

10. The authorities sought to recover the alleged overdrawal amount from the writ petitioner when he was on the verge of retirement. In fact, alleged overdrawal amount was deducted from the gratuity receivable.

11. There is nothing on record to suggest that, the writ petitioner was involved or in connivance with any of the authorities in receiving the alleged overdrawn amount. In our view, the writ petitioner falls within the category of persons from whom it was impermissible in law to recover the overdrawn amount in light of **Rafiq Masih (White Washer) (supra)**.

12. In **Asitosh Bhattacharya (supra)** the coordinate Bench, noted **Rafiq Masih (White Washer) (supra)** and found in the facts of that case that the recovery made from the person there was without any authority.

13. In the facts and circumstances of the present case, therefore, we set aside the impugned order of the learned

Tribunal and direct the authorities to refund the petitioner the sum of Rs.1,75,516/- within a period of four weeks from the date of this order.

14. **W.P.S.T. 233 of 2016** is **disposed of** accordingly.

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

(Debangsu Basak, J.)

16. I agree.

(Md. Shabbar Rashidi, J.)

CHC