Court No.22

21.8.2023

(Item No. ML-117)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 7493 of 2020
+
CAN 1 of 2020

Aminul Islam
VS
The State of West Bengal & Ors.

Mr. Saibal Acharya
Mr. Jakir Hossain
.... For the petitioner

Mr. Bhaskar Prasad Vaisya
Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
.... For the State

The petitioner claimed to have worked as an **Assistant Teacher**. The petitioner retired from his employment of **February 29, 2020** as would be evident from the Pension Payment Order dated **September 27, 2021** a copy whereof is handed over to this Court by the learned counsel for the petitioner and the same is taken on record. The first demand on account of alleged overdrawal was made and intimated to the petitioner dated **March 17, 2020, Annexure P-6** at **page 21** to the writ petition. It is evident that, after the employee retired the State employer has alleged the overdrawal against the petitioner.

The law is well settled by the Hon'ble Supreme Court **I*n the matter of: State of Punjab and others Vs. Rafiq Masih (White Washer) and others***

reported at (2015) 4 Supreme Court Cases 334.

The Hon'ble Supreme Court had observed as under:

"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 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."***

In view of the above, this Court is of the considered view that, the first demand raised by the State employer on account of alleged overdrawal against the petitioner after his retirement for recovery and the same is iniquitous or harsh or arbitrary on the part of the State employer. The employee has served the employer for a substantive period and even before the date of retirement of the employee, the employer did not raise any objection on account of the alleged overdrawal. In the facts of this case when the petitioner retired on **February 29, 2020** and the first demand was raised on **March 17, 2020** as narrated above, if such demand stands this would **far outweigh the equitable balance of the employer's right to recover**.

For the foregoing reasons and discussions the impugned decision of the State employer on account of the alleged overdrawal against the petitioner dated **March 17, 2020, Annexure P-6** at **page 21** to the writ petition and the reflection in sync therewith in the Pension Payment Order issued in favour of the petitioner stand **set aside** and **quashed**.

The revised Pension Payment Order shall be issued by the State employer in favour of the petitioner positively within a period of **four weeks** from the date of communication of this order before the appropriate authority. The pension and all other allied retirement benefit to which the petitioner is eligible to receive in accordance with law shall be released, disbursed and paid to the petitioner forthwith taking into account, as if there was no allegation of overdrawal against the petitioner. The overdrawn amount for a sum of **Rs.2,58,454/-** shall be refunded and returned to the petitioner **along with interest @ 8% per annum since the next date of retirement i.e. March 1, 2020 till the actual payment is tendered to the petitioner**.

Pursuant to the direction of the co-ordinate bench made on **April 20, 2021** the learned State counsel has confirmed that, the amount has already been lying deposited by the School authority in a nationalized bank earning maximum interest. While disbursing and paying the petitioner **along with interest @ 8% per annum** as directed above, the entire accrual shall be considered and calculated. If the accrual along with principal sum is higher, then the **excess** sum should revert back to the State Exchequer and if the accrual along with principal is lesser, then the **balance** shall be paid by the State employer to the petitioner. The entire exercise of making actual payment to the petitioner shall be carried out and completed positively within a period of **four weeks** from the date of issuing the revised pension payment order directed above.

The learned counsel for the State opposed the grant of interest. Such opposition stands **overruled** by this Court in exercise of its equitable jurisdiction and considering the fact that the amount which is lawfully payable to the petitioner has been withheld illegally and wrongfully.

The office note dated August 25, 2022 shows that despite direction being made by a co-ordinate bench on March 16, 2021 no affidavit-in-opposition was filed.

On the above terms and with the above observations, this writ petition being **WPA 7439 of 2020** stands allowed and application being **CAN 1 of 2020** stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)