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12.04.2023
SB
Ct. No. 2

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

W.P.A. 734 of 2023

Gyalbo Lama
-versus-
The State of West Bengal & Ors.

Ms. Arpita Saha
...For the Petitioner

Mr. Bikramaditya Ghosh
Ms. Bedashruti Bose
... For the State

Affidavit-of-service, filed in Court, is taken on record.

The petitioner was the Head Teacher of a Primary School, on 28.02.2022, he retired from his service on superannuation.

On 06.01.2023 the petitioner had to deposit a sum of Rs.79,828.90/- as the condition precedent for disbursement of his retrial dues since it was alleged that during the tenure of his service, he had overdrawn the said amount.

It appears from record that such overdrawn amount was credited to the petitioner on account of wrong pay fixation. The petitioner was not responsible for fixation of such erroneous pay scale.

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 employee 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 had 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 discussions 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.79,828.90/- along with interest @8% per annum therein 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.

On the above terms **WPA 734 of 2023** is disposed of, without any order as to costs.

Photostat certified of this order, if applied for, be furnished expeditiously.

(ANIRUDDHA ROY, J.)