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01.08.2023
Ct. No.2
b.das

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction**

WPA No. 1363 of 2023

Jaya Das Gupta
Vs.
The State of W.B. & Ors.

Mr. Kunaljit Bhattacharjee
Mr. Alok Sah
Mr. Rahul Ghatak
...for the petitioner.
Mr. Hirak Barman
Mr. Pretom Das
..for the State.

Affidavit of service filed by the petitioner is taken on record.

None appears for the respondent nos.9 and 10 despite service.

Report submitted on behalf of the respondents is taken on record.

Supplementary affidavit submitted on behalf of the petitioner is also taken on record.

The notices issued upon the petitioner requesting refund of the overdrawn amount of Rs.42,180/- on 24th March, 2023, 24th April, 2023, 10th May, 2023, 11th May, 2023 and 28th June, 2023 are assailed in the writ petition.

The petitioner was appointed as an Assistant Teacher of Sishumahal KG School and superannuated on 31st March, 2021. An amount of Rs.42,180/- was overdrawn by the petitioner due to wrong pay fixation by the authority. The Grade Pay of the petitioner was revised from Rs.2600/- to Rs.3,600/- with effect from 1st August, 2019 in terms of G.O. No.510-SP/P/10M-06/09 (Pt.-I) TET dated 26th July, 2019.

It was subsequently decided by the School Education Department in a reasoned order dated 22nd December, 2021 that the petitioner being an untrained primary teacher was entitled to grade pay of Rs.2,900/-. Hence the overdrawal.

Learned counsel for the petitioner submits that since the overdrawal was not due to any fault on the part of the petitioner and also, since the petitioner is a retired employee the authority cannot direct refund of the overdrawn amount from the petitioner.

Learned counsel places reliance on the authority in State of Punjab vs. Rafiq Masih (whitewasher) ETC reported in 2015 AIR SCW 501 wherein the Hon'ble Supreme Court has observed that recoveries by the employer from retired employees is not permissible in law.

Upon consideration of the submission made on behalf of the parties and material on record, this

Court is inclined to hold that since the overdrawal made by the petitioner was not on account of any fault on the part of the petitioner, the authority is not entitled to claim refund of the same from the petitioner, who is a retired employee.

In view of the above as well as the observation made by the Hon'ble Supreme Court in the judgment referred to hereinabove, the notices issued by the authority on 24th March, 2023, 24th April, 2023, 10th May, 2023, 11th May, 2023 and 28th June, 2023 respectively claiming refund of the overdrawn amount by the petitioner are quashed/set aside.

Record reveals that co-ordinate Bench of this Court by an order passed on 9th February, 2023 in WPA 954 of 2022 directed the concerned authority to issue order in respect of payment of pension and other retiral benefits of the petitioner within six weeks from the date of the order.

Since learned counsel for the petitioner submits that a contempt application has been filed by the petitioner for non-compliance of the said order by the concerned authority, this Court does not wish to make any comment on the said issue in the present writ petition.

Accordingly, the writ petition being WPA 1363 of 2023 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

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

(Suvra Ghosh, J.)