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08.08.2023
Ct. No.2
b.das

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

WPA No. 1763 of 2023

Nirmal Kumar Roy
Vs.
The State of W.B. & Ors.

Mr. Anirban Chakraborty
...for the petitioner.

Mr. Subir Kr. Saha
Ms. B. Bose ..for the State.

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

Heard learned counsels for the parties.

The petitioner was appointed as an assistant teacher of a primary school and superannuated on 31st January, 2021. The pay scale of the petitioner was revised from time to time in terms of the relevant Government Orders/Rules and there was no dispute with regard to pay fixation of the petitioner during his service. Upon retirement of the petitioner pension papers of the petitioner were withheld on the ground that the petitioner had drawn excess amount due to wrong fixation of his pay scale during his service. The overdrawn amount to the tune of Rs.39,298/- was deducted through T. R. Challan on 05th January, 2023.

It appears from the record that such overdrawn amount was credited to the petitioner on account of wrong pay fixation for which the petitioner cannot be held responsible.

Learned counsel for the petitioner places reliance on the authorities in the case of ***Shyam Babu Verma vs. Union of India*** reported in ***(1994) 2 SCC 521, Union of India and Others 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*** in support of his contention. Paragraph 18 of the authority in ***Rafiq Masih (supra)*** is reproduced below for the purpose of better understanding of the issue.

> "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 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 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 inclined to hold that since the overdrawn amount of the petitioner was deducted through T. R. challan by the authority despite having no fault on his part, the petitioner is entitled to the relief as prayed for.

Upon consideration of the submission made on behalf of the parties, the writ petition is disposed of directing the 2nd and 3rd respondents to release the said amount of Rs.39,298/- - along with interest thereon at the rate of 8% per annum in favour of the petitioner from 5th January, 2023, till the date of payment. The entire amount be refunded within one month from the date of communication of this order.

With the above observations and directions the writ petition 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.)