

05.08.2024.
PB
Sl. No.96.
Ct. No.14.

**In The High Court At Calcutta
Constitution Writ Jurisdiction
Appellate Side**

WPA 12481 of 2024

Dinesh Chandra Das
Vs
The State of West Bengal & Ors.

Mr. K. P. Santra.
.....for the petitioner.
Mr. Biplab Guha.
.....for the State.

The petitioner is a retired primary school teacher. He is aggrieved by the act of the respondent authority in deducting amount from his terminal dues thrice allegedly on account of overdrawal payment.

A sum of Rs.1,10,785/- was directed to be refunded by the petitioner in December, 2020. A further sum of Rs.12,123/- was directed to be refunded in July, 2021 and at the time of issuance of PPO on 3rd November, 2021, a sum of Rs.85,191/- has been deducted from his terminal dues.

The petitioner prays for refund of the amount deducted from his terminal benefit.

The petitioner retired from service on 30th April, 2020. There is no document in support of the request for refund of excess payment prior to the teacher attaining his normal age of superannuation.

Learned advocate representing the State respondent stresses upon the fact that the petitioner mentioned a wrong date of option which in turn led to the error in calculation.

The petitioner never raised any objection at the time when he was directed to refund the subject amount. Only after the PPO was issued, the objection has been raised.

Attention of the Court has been drawn to the communication made by the Deputy Director of School Education R/P dated 28th February, 2022 vide Memo No.141-SC/P addressed to the District Inspector of Schools (PE), Malda that the petitioner changed his date of option of ROPA 1998 advertently as felt suitable by himself to save him from financial losses.

Attention of the Court has also been drawn to the communication of the District Inspector of Schools (PE), Malda dated 13th September, 2021 addressed to the Commissioner of School Education with a copy to the petitioner that the teacher did not opt for benefit of ROPA, 1999 and accordingly, his pension file was objected from the office of the Director of Pension, Provident Fund & Group Insurance, Jalpaiguri on several occasions on account of non-filing of option.

The Court is left wondering as to why the respondent authority failed to detect the error as long

as the teacher was in service. It is only after the petitioner attained his normal age of superannuation that the communications have been made.

The Hon'ble Supreme Court in the matter of State of Punjab & Ors. Vs. Rafique M & Ors. reported in 2015(4) SCC 334 has categorically laid down that the refund of excess payment from retired employee is impermissible.

In view of the law laid down by the Hon'ble Supreme Court, the respondent authority ought not to have taken steps for refund of any amount that was paid in excess to the petitioner inadvertently. The petitioner joined service in the year 1981 and retired on 30th April, 2020. The subject option in question is of the year 1986-87 under ROPA, 1981 and thereafter ROPA, 1998.

The authority ought to have detected the error as long as the employee was in service. The petitioner received the enhanced payment for more than five years prior to his retirement. The Hon'ble Supreme Court in Rafique Masih (supra) held that recovery from employees where excess payment had been made for a period in excess of five years before the order of recovery is issued is impermissible.

In view of the above, it is held that the amount which has been recovered from the terminal benefit of

the petitioner is liable to be refunded. The deduction is contrary to the law laid down by the Hon'ble Supreme Court.

The District Inspector of Schools (PE), Malda is, accordingly, directed to take steps for refund of the amount deducted from the terminal dues of the petitioner at the earliest but positively within a period of twelve weeks from the date of communication of this order.

As the deduction had been made illegally and erroneously, the petitioner would be entitled to receive the aforesaid amount along with simple interest @ 7% p.a. on and from the date of deduction till the date of actual payment.

The writ petition stands disposed of.

Report by the District Inspector of Schools (PE), Malda dated 6th May, 2024 filed in Court today is taken on record.

Urgent certified photocopy of this order, if applied for, be supplied to the parties as early as possible.

(Amrita Sinha, J.)