09 30.01.2024
rkd Ct.15

W.P.A. 13231 of 2016

Pradosh Kumar Chakraborty
-vs-
The State of West Bengal & Ors.

Mr. Sakti Pada Jana
....for the petitioner.

Mr. Suman Basu,
Ms. Ananya Roy,
....for the respondent nos.3 & 4.

Ms. Sima Adhikari,
Ms. Kakali Naskar
....for the State.

In the writ petition petitioner has questioned recovery of alleged excess drawn amount from his gratuity at the time of settling the pension case after petitioner's retirement from the post of Panchayat Audit and Accounts Officer in Sitalkuchi Gram Panchayat, Coochbehar.

Petitioner superannuated from the post of Panchayat Audit and Account Officer on 31st December, 2013 and by issuing Pension Payment Order vide Memo dated 23rd September, 2014 retiral dues were released in his favour upon making adjustment of Rs.70879.00/- from the gratuity of the petitioner on the count that excess payment has been made to the petitioner due to wrong fixation of pay.

It is also submitted that the concerned Block Development Officer, Sitalkuchi Block being respondent no.2 made decision to refix the pay of the petitioner as it emanates from page 24 of the writ petition wherein certain observations have been made by the respondent no.2 at the time of settling the pension case of the petitioner.

On behalf of the petitioner Mr. Jana, learned advocate has relied upon the judgment of the Apex Court, reported in **(2015) 4 SCC 334 [State of Punjab & Ors. Vs. Rafiq Mashi (White Washer) & Ors.].** According to the petitioner in terms of the ratio of **Rafiq Mashi** (supra) the respondent authorities are not authorised to recover the alleged excess drawn amount from the gratuity of the petitioner while releasing retiral dues.

Respondent nos, 2, 3 & 4 are represented by learned advocates.

It has been submitted on behalf of the concerned Block Development Officer that a decision has been taken by the respondent no.2 vide Memo dated 12th March, 2014 whereby pay of the petitioner was refixed for the period from 19th January, 1999 to 31st December, 2013 in reference to Government Order dated 9th April, 1986 and on calculation Rs.70879.00/- was found to be excess drawn. It has been submitted that there is no anomaly in refixing the pay of the petitioner on applying the relevant Government Order for the aforesaid period.

Principal Accountant General (A& E), West Bengal is also represented by the learned advocate who submits that the responsibility of the Principal Accountant General is to issue Pension Payment Order based on the calculation made by the Pension Sanctioning Authority. Therefore whatever fixation of pay with regard to past service of the petitioner has been made by the respondent no.2 the same was taken into consideration while issuing Pension Payment Order and accordingly it has been indicated in the Pension Payment Order dated 23rd September, 2014 that Rs. 70879.00/- is the overdraw amount.

However, it is further submitted on behalf of the Principal Accountant General that based on Memo dated 5th December, 2013 addressed to the respondent no.2 containing certain observations relating to pay fixation of the petitioner the pay was refixed by the respondent no.2 by issuing Memo dated 12th March, 2014.

Having considered the submissions made on behalf of the parties, it appears that while releasing the retiral dues including pension

Rs.70879.00/- was deducted from the gratuity of the petitioner and the question has been raised whether such deduction is correct or not in view of the law laid down by the Apex Court in **Rafiq Masih** (supra).

It is no more *res integra* that after superannuation of the employee employer is authorised to recover from the gratuity while releasing retiral dues by refixing pay. In this regard this Court finds it apt to quote paragraph 18 of **Rafiq Masih** (supra):-

> *"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:-*
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> *(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."

It has been succinctly decided by the Apex Court in **Rafiq Mashi** (supra) that recovery from retired employees or the employees who are due to retire within one year from the date of order of recovery is impermissible. In the present case petitioner retired on superannuuation on 31st December, 2013 whereas decision to recover alleged excess drawn amount from the gratuity was taken by the respondent no.2 on 12th March, 2014 and based on such refixation Pension Payment Order was issued on 23rd September, 2014 which is contrary to law laid down in **Rafiq Mashi** (supra).

Accordingly, the concerned respondent authorities are permanently injuncted from recovery of Rs.70879.00/- from the retiral dues of the petitioner and they are directed to release the retiral dues upon issuance of Pension Payment Order afresh within a period of eight weeks from the date of communication of this order.

However, this order shall not prevent the concerned respondent authorities to refix the pension of the petitioner based on refixation of pay made by the respondent no.2 and to determine the monthly pension payable to him, if, the same is permissible in accordance with law.

With the aforesaid directions and observations the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)