12.08.2024
Court No. 18
Item No.11
(**Suvendu**)

WPA 17817 of 2024

Sk. Md. Shehabuddin
-Versus-
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Sk. Imtiaj Uddin
........for the petitioner

Mr. Bishnupada Jana
.......for the State

Matter relates to release of retiral dues including pension in view of superannuation of petitioner on 31st March, 2024 from the post of Assistant Teacher.

In terms of order dated 26th July, 2024, supplementary affidavit filed on behalf of the petitioner is taken on record.

Though petitioner retired on superannuation on 31st March, 2024 but in terms of statements made in paragraph 4 of the supplementary affidavit it appears that the concerned respondent authority raised objection on 12th May, 2023 which is precisely ten months before superannuation of petitioner, relating to enjoying incremental benefits for training qualification based on Government Order No. 2141-MD dated 13th September, 2018. It is also submitted that after superannuation of petitioner the Joint Director of Accounts raised objection on 25th April, 2024, as it appears from a document which is at page 21 of the writ petition, where identical objection was also raised relating to sanction of incremental benefits in favour of the petitioner for not having training qualification.

Learned advocate representing the petitioner relies upon the judgment of the Hon'ble Supreme Court reported in **(2015) 4 Supreme Court Cases 334** [**State of Punjab and Others –Vs- Rafiq Masih (White Washer) and Others**]. Based on the ratio of **Rafiq Masih** (supra), it is the contention of petitioner that after superannuation of petitioner refund cannot be made on the allegation of excess payment of incremental benefits since petitioner was not having training qualification. It is further submitted that petitioner enjoyed incremental benefits from 1st July, 2016 till date of his superannuation.

State respondents are represented by learned advocate who is posed with a query that how a Government Order dated 13th September, 2018 can govern the case since petitioner was accorded incremental benefits with effect from

1st July, 2016 in the event the said Government Order does not have retrospective effect.

In addition thereto, the Court does not get satisfactory reply as to why the ratio of **Rafiq Masih** (supra) shall not apply in case of the petitioner since objection was raised relating to sanction of incremental benefits for training qualification after superannuation of petitioner.

Having considered the submissions made on behalf of the parties and taking note of the materials available on record, court finds that petitioner retired on superannuation on 31st March, 2024 from the post of Assistant Teacher and objection was raised by the Joint Director of Accounts on 25th April, 2024 by issuing a document which is at page 21 of the writ petition directing the school authority to calculate excess amount drawn by the petitioner due to sanction of incremental benefits with effect from 1st July, 2016 which was impermissible in terms of Government Order dated 13th September, 2018.

Placing ratio of **Rafiq Masih** (supra) it can be concluded that after superannuation of petitioner on 31st March, 2024 State respondents cannot refix the pay of petitioner on curtailment of incremental benefits which was enjoyed on and from 1st July, 2016 in order to make calculation for refund of excess drawn amount while releasing retiral dues for adjusting the same from gratuity.

In this regard 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:*
>
> *(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."

Accordingly, the State respondents are directed to finalize pension case of the petitioner and release the retiral dues on issuance of Pension Payment Order by eight weeks from the date of communication of this order, without directing the petitioner to refund excess drawn amount.

However, this order shall not preclude the State respondents to refix pension of the petitioner if it is found that petitioner is not entitled to receive incremental benefits for not having training qualification at the material point of time. However, the respondents are restrained from recovering excess drawn amount from the petitioner if pension of petitioner is refixed accordingly.

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

There shall be, however, no order as to costs.

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

(Saugata Bhattacharyya, J.)