27.02.2024
Item no. 5
Court No.550
Saswata

W.P.A. 17425 of 2019
Debashis Chatterjee
-vs-
The State of West Bengal & Ors.

Mr. Manas Kr. Ghosh
Ms. Susmita Dey (Basu)

...For the petitioner

Mr. T.M.Siddiqui
Mr. Suddhadev Adak

...For the respondent nos. 3 to 5

1. The present writ application had been disposed of by order dated 12th April 2023. Subsequently, since it was represented on behalf of the respondents that the petitioner was a Group-B employee and not a Group-C employee, the matter was directed to be placed under the heading "For Orders".

2. Learned advocate appearing for the respondent nos. 3 to 5 by placing reliance on a notification dated 25th September 2019 issued by the Government of West Bengal, Finance Department, Audit Branch, submits that as per the said notification the petitioner is classified as a Group-B employee and not a Group-C employee. The relevant portion of the above notification relied on by the respondents as regards classification of Government employee is extracted hereinbelow: -

> *"13.* ***Classification of Government employees*** *– From the date of commencement of these rules, Government employees shall be classified as Group A, Group B, Group C and Group D in the following manner:-*
>
> *(i) Group A – Government employees holding all posts in the Pay Level 12 and above.*
>
> *(ii) Group B – Government employees holding all posts in the Pay Levels 8 to 11.*
>
> *(iii) Group C – Government employees holding all posts in the Pay Levels 3 to 7.*

> *(iv) Group D – Government employees holding all posts in the Pay Levels 1 and 2."*

3. Having regard to the aforesaid it is submitted that the petitioner should not be granted benefit of the judgment delivered by the Hon'ble Supreme Court in the case of ***State of Punjab & Others versus Rafiq Masih (White Washer)***, reported in **(2015) 4 SCC 334** and the order dated 12th April, 2023 should be recalled.
4. I, however, notice that the aforesaid notification which was issued by the Finance Department pertains to classification of Government employees. From the statements made in the petition which remains uncontroverted it would appear that the employer of the petitioner is a Government undertaking and as such, the petitioner can never be classified as a Government employee. In any event, it may be noticed that the petitioner was superannuated from his service on 28th February, 2017 and the retiral benefits were belatedly disbursed in favour of the petitioner.
5. From the terminal benefits due and payable to the petitioner a sum of Rs.45,404/- was deducted on the ground that the same was over drawn by the petitioner. Admittedly, the notification relied on by the learned advocate appearing for the respondent nos. 3 to 5 has been issued on 25th September 2019. From the classification of Government employee, even if such classification is applicable to the petitioner, the same can only apply from the date when the same was published as is recorded in Clause 13 of the above notification.
6. Since, the petitioner had retired much prior thereto, the same cannot be made applicable to the petitioner. Further in the light of the judgment delivered in the case of **Rafiq Masih (White Washer)** *(supra)* it would appear that the Hon'ble Supreme Court has been pleased to record that in certain cases, recovery in respect of overdrawn amount is impermissible.

7. The relevant paragraph of the aforesaid judgment is extracted below :

> *"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."*

8. It is not the case of the respondents that the petitioner had any role in his overdrawal. It may be noticed that this Hon'ble Court by its order dated 12th April 2023 had come to a categorical finding that recovery of the aforesaid overdrawal amount would cause extreme hardship. The relevant portion of the order dated 12th April 2023 is extracted hereinbelow:

> *"In the light of the discussions above, this Court finds that the petitioner who has superannuated from service on February 28, 2017 will suffer extreme hardship in the event the said amount of Rs.45,040/- is not paid to him. The deduction of the amount for being overdrawn has already caused hardship to the petitioner.*
>
> *In the circumstances, the impugned order dated July 26, 2019 is quashed and/or set aside."*

9. Having regard to the aforesaid, since the Coordinate Bench of this Court has already arrived at a conclusion that recovery from the petitioner would cause extreme hardship to him, I do

not find any reason or to recall the order dated 12^{th} April, 2023.

10. The respondents are directed to immediately comply with the directions passed by this Court on 12^{th} April 2023.
11. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)