

WPST 183 of 2024

(Gadadhar Ghosh Vs. The secretary, Government of
West Bengal & Ors.)

Mr. Sujit Kumar Ghosh
Mr. Suman Chakraborty
Mr. P. Roy

..... For the petitioner

Mr. Tapan Kumar Mukherjee, AGP
Mr. Somnath Naskar

..... For the State respondents

The present writ petition has been preferred challenging an order dated 27th June, 2024 passed by the learned Tribunal in the original application (in short, OA), being OA 882 of 2019.

Shorn of unnecessary details, the facts are that the petitioner joined the post of Assistant Operator at Khargram Block Development Office, District-Murshidabad. Upon rendering 37 years of service, he retired on 31st March, 2014. As no steps were taken by the respondents towards disbursement of the retirement benefits, the petitioner was constrained to prefer OA 1040 of 2014 before the learned Tribunal. In course of hearing of the said OA, a letter dated 25th July, 2014 issued by the Senior Accounts Officer addressed to the respondent no. 3 was placed before the learned Tribunal. By the said letter the Senior Accounts Officer returned the pension papers/service book of the petitioner to the respondent no. 3 with a request to re-submit the same along with the documents mentioned in the letter dated 25th July, 2014. Upon perusal of the said letter, the

learned Tribunal disposed of the OA by an order dated 12th June, 2015 directing the respondent no. 3 to re-submit the pension papers of the petitioner along with the relevant documents within a period of four weeks from the date of communication of the order. Subsequent thereto, a memo dated 23rd December, 2016 was issued sanctioning an amount of Rs.3,98,871/- towards gratuity with a direction to recover an overdrawn amount of Rs.3,76,810/-. Aggrieved by such recovery the OA 882 of 2019 was preferred and the same was disposed of by the order impugned in the present writ petition.

Mr. Ghosh, learned advocate appearing for the petitioner submits that prior to retirement, the petitioner was enjoying a pay scale of Rs.300/- - Rs.625/-. After cessation of employer-employee relationship, the respondents illegally decided to downgrade the petitioner's scale of pay to Rs.245/- - Rs.455/- retrospectively and to recover an alleged overdrawn amount from the petitioner's gratuity.

He argues that the excess payment was not paid on account of any misrepresentation or fraud on the part of the petitioner. The petitioner had no knowledge that the payment received was in excess of what was due. In such circumstances, the respondents could not have recovered an amount of Rs.3,76,810/- from the petitioner's gratuity and such act affects the petitioner's livelihood. The scale in terms of the ROPA Rules was fixed by the authorities concerned on their own and there was no participation of

the petitioner in the process of such refixation. Such arguments, as advanced, were glossed over by the learned Tribunal and the OA was dismissed by a cryptic order only observing that *'it was a correct action to recover the overdrawn from his gratuity'*. In support of the arguments, reliance has been placed upon the judgment delivered by the Hon'ble Supreme Court in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer)*, reported in (2015) 4 SCC 334 and a judgment delivered by the learned Tribunal in the case of *Bireswar Dey Vs. State of West Bengal & Ors.*

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents, however, denies and disputes the contention of the petitioner and placing reliance upon the provision of Section 21 of the Administrative Tribunal Act, 1985, he argues that the OA was a belated one having been filed about three years after issuance of the Pension Payment Order (in short, PPO) and in view thereof, the OA itself was not maintainable.

Placing reliance upon Rule 140(2) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, Mr. Mukherjee argues that the competent authority had every jurisdiction to recover any amount overdrawn by the petitioner and furthermore it is the duty of every Government servant to clear all settlement dues before the date of retirement.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The primary relief sought for by the petitioner in the OA was as follows:

'Direction upon the respondent authorities concerned to pay and disburse all the pensionary benefits in the light of pension paper by the B.D.O. Khargram and the arrear dues to the applicant without recover and to release the recovery amount of gratuity of total Rs.3,76,810/-.'

In the said OA, there was no prayer claiming any interest over the alleged overdrawn amount. The petitioner also did not challenge the decision towards reduction of pay. On the basis of the revised pay scale the petitioner has been granted the retirement benefits and he duly accepted the same. His only grievance was that the respondents illegally deducted an alleged overdrawn amount from his gratuity. The scope and ambit of the OA was thus restricted to the recovery of an amount of Rs.3,76,810/- from the gratuity of the petitioner.

The argument of Mr. Mukherjee that the OA itself was not maintainable, is not acceptable to us inasmuch as no such argument was advanced on behalf of the respondents at the time of hearing of the OA and the learned Tribunal upon considering the materials on record dismissed the OA on its merits. In view thereof, the issue of limitation cannot be re-urged at this stage moreso when the dispute pertains to recovery of an amount from the gratuity of an employee and as delay cannot be a bar against grant of an equitable relief.

The argument of Mr. Mukherjee as regards the jurisdiction of the employer to recover an overdrawn amount placing reliance upon Rule 140(2) of the DCRB Rules, in our opinion, needs to be construed and interpreted in the light of the judgments delivered by the Hon'ble Supreme Court wherein the Hon'ble Court has directed refund of recovery when the excess amount was not paid on account of any misrepresentation or fraud on the part of the petitioner and also taking into consideration the fact that the issue of recovery was urged by a memo dated 25th July, 2014, admittedly, after the petitioner's retirement.

In the said conspectus, we are of the opinion that the respondents ought not to have recovered the said amount of Rs.3,76,810/- from the gratuity of the petitioner. The order impugned in the present writ petition is *ex facie* cryptic. The arguments advanced were not taken into consideration and the ratio of the judgments delivered by the Hon'ble Supreme Court was not discussed. The OA was dismissed only with an observation that '*it was a correct action to recover the overdrawn from his gratuity*'.

Accordingly, the order impugned in the present writ petition is set aside and the respondents are directed to refund the amount of Rs.3,76,810/- to the petitioner positively by the end of November, 2024.

The petitioner is directed to communicate this order to the respondents immediately.

With the above observations and directions, the writ petition being WPST 183 of 2024 is disposed of.

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

All parties shall act on the service copies of this order duly downloaded from the official website of this Court.

(Biswaroop Chowdhury, J.) (Tapabrata Chakraborty, J.)