02.05.2024.
Item no. 110.
Court No. 154
sp

**W.P.A. No. 23819 of 2017**

Shanti Moyee Patra
Versus
The State of West Bengal & Ors.

Ms. Bratati Dutta
..For the petitioner.

Mr. Narayan Chandra Bhattacharya,
Mr. Tapas Kr. Mondal
...for the State

Affidavit-of-service filed in Court today is taken on record.

The husband of the writ petitioner served as Head Teacher in a School and retired on 31.12.1993 and died on 14.08.2005. As pre-condition for disbursal of the retiral benefits, the PPO was issued in favour of the husband of the petitioner deducting a sum of Rs.77,554/- by way of Treasury Challan on the ground of alleged overdrawal. Being aggrieved, the petitioner has approached this Court by way of the present writ petition.

The issue whether overdrawal of pay can be adjusted against retirement dues of an employee has been settled in the case of *Shyam Babu Verma & Ors. v. Union of India & Ors.,* reported in *(1994) 2 SCC 521* and also in a later decision in the case of *Syed Abdul Qadir & Ors. v. State of Bihar & Ors.* reported in *(2009) 3 SCC 475* and also in the case of *State of Punjab and Ors. v. Rafiq Masih (White Washer) & Ors.*, reported in *(2015) 4 SCC 334*. A judgement of a co-ordinate Bench of this court in

the case of *Shiba Rani Maity v. The State of West Bengal* in *W.P. No. 29979 (W) of 2016* as well as *Biswanath Ghosh v. The State of West Bengal* in *W.P. No. 27562 (W) of 2016* has categorically held that in a case where no rights have accrued in favour of a third party, the petitioner who has suffered by reason of non-payment of amount withheld on the grounds of an alleged overdrawal has a right to approach this court for appropriate relief. The relevant paragraphs from *WP No. 29979 (W) of 2016* are set out below:

> "*(15) The only other question is that whether the writ petition should be entertained in spite of delay of about 17 years in approaching this Court. In a judgment and order dated 6 September, 2010 delivered in MAT 1933 of 2010 passed by a Division Bench of this Court and held that although the petitioner had approached the Court after a lapse of nine years, no third party right had accrued because of the delay and it was only the petitioner who suffered due to non-payment of the withheld amount on account of alleged over-drawal. Accordingly the Division Bench set aside the order of the Learned Single Judge by which the writ petition had been dismissed only on the ground of delay.*
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> *(16) Following the Division Bench judgment of this Court adverted to above, I hold that it is only the petitioner who suffered by reason of the wrongful withholding of the aforesaid sum from his retiral benefits. Although there has been a delay of about 17 years in approaching this Court, the same has not given rise to any third party right and allowing this writ application is not going to affect the right of any third party. It may also be noted that the Hon'ble Apex Court observed in its decision in the case of* ***Union of India vs. Tarsem Singh, (2008) 3 SCC 648***

*that relief may be granted to a writ petitioner in spite of the delay if it does not affect the right of third parties."*

Paragraph 18 *of "State of Punjab v. Rafiq Masih"* (supra) is also required to be set out:

*"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."*

It is clear from the above that a Writ of Mandamus is prayed for is maintainable in the facts of the present case.

The Director of Pension, Provident Fund and Group Insurance, Government of West Bengal, concerned District Inspector of Schools and also the concerned Treasury Officer are accordingly directed to release the amount of Rs. 77,554/- to the petitioner along with interest @8% per annum with effect from the date of issuance of the pension payment order, within a period of eight weeks from the date of communication of this order.

The concerned Treasury Officer shall verify as to whether the petitioner is present in person along with the documents of identity before making any disbursement as directed hereinabove. In the event the petitioner is not present, the matter shall be reported to the Registrar General of this Court for appropriate action.

With the aforesaid directions, the instant writ petition is disposed of.

Urgent certified website copy of this order, if applied for, be made available to the petitioner upon compliance with the requisite formalities.

***(Rajasekhar Mantha, J.)***