

09.12.2024
(M/L-16)
Ct.-19
(Susanta/
Samar)

IN THE HIGH COURT AT CLACUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. 26679 of 2024

Madhu Sudhan Singha

-Vs-

The State of West Bengal & Ors.

Mr. Avishek Prasad,
Mr. Sourodeep Singha,

.... For the Petitioner.

Md. Sarwar Jahan,
Sk. Nayeemul Haque,

.... For the DPSC (Murshidabad).

Mr. Gourav Das

... For the State.

Mr. Gourav Das, learned advocate for the State files the report as directed by the order dated November 18, 2024; let it be kept with the record.

The petitioner was an Accountant at the District Primary School Council, Murshidabad, the respondent no.6 herein; on attaining the age of superannuation, he had retired from his said service on January 31, 2023.

A sum of Rs. 95,931/- (Rupees ninety five thousand nine hundred thirty one only) was recovered from the retiral benefits of the petitioner on the ground that due to erroneous fixation in his scale of pay, he was given the said amount in excess during his service.

The petitioner is praying refund of the said amount with interest thereon, from the date of his retirement.

There is nothing on record to suggest that the petitioner, in any way, was responsible for such overpayment.

In view of the several decisions of the Hon'ble Supreme Court, e.g (i) **SHYAM BABU VERMA –VS– UNION OF INDIA**, reported in (1994) 2 SCC 521; (ii) **UNION OF INDIA & ORS. –VS– TARSEM SINGH**, reported in (2008) 8 SCC 648, and (iii) **STATE OF PUNJAB & ORS. –VS– RAFIQ MASIH (WHITE WASHER) & ORS.**, reported in (2015) 4 SCC 334, the issue whether such overdrawn amount can be adjusted against the retiral benefits of an employee is no longer *res integra*.

However, to clarify the issue, paragraph '18' of the decision of the Hon'ble Supreme Court in the case of **Rafiq Masih (supra)** is quoted 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 II 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."*

Summing up the discussion made above, this Court is of the opinion that the petitioner is entitled to the relief as prayed for.

Accordingly, the concerned Director of Pension, Provident Fund and Group Insurance, Government of West Bengal and also the concerned Treasury Officer, the respondent nos. 4 and 10 herein respectively are directed to release the said amount of Rs. 95,931/-(Rupees ninety five thousand nine hundred thirty one only) along with interest @ 8% per annum thereon, in favour of the petitioner from the date of issuance of the Pension Payment Order till the date of payment; such payment is to be made within a period of **eight weeks** from the date of communication of this order.

W.P.A. 26679 of 2024 is disposed of with the above terms.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)