

S/L 14
04.4.2024
Court No.11
SD

WPA 22455 of 2010

Ashoke Kumar Dutta

Vs.

West Bengal State Electricity Distribution Co. Ltd. & Ors.

Mr. Sujit Banerjee
Mr. Nilay Sengupta

...for the Petitioner.

Mr. Sumit Kr. Panja
Mr. Sumit Roy

...for the WBSEDCL.

After rendering service as an employee of West Bengal State Electricity Distribution Co. Ltd. (in short, WBSEDCL) without any blemish, the petitioner retired from service on October 31, 2007 on attaining the age of superannuation and subsequently, a sum of Rs.35,000/- was deducted from the retirement benefits of the petitioner. The petitioner by making an application requested the competent authority to refund the amount but in vain. Eventually, by passing an order dated May 9, 2008 by the General Manager, the petitioner's prayer for refund of that amount was turned down. Upon receipt of the order of the General Manager, the petitioner by making representation requested the authority concerned to revisit the issue and recall the order dated 09.05.2008 but to no avail. Consequently, the petitioner was constrained to approach this Court by preferring this writ petition.

Mr. Banerjee, learned advocate for the petitioner submits that the amount was deducted from the retirement benefits of the petitioner on the plea that anti-dated benefits

of Scale 9 was given to the petitioner erroneously and resultantly, the next Scale being Scale no. 11 was also given to him mistakenly which resulted in over drawl of that amount. He contends that after severance of master-servant relationship, the authority concerned deducted that amount which is not permissible. To embolden his such contention, he placed reliance upon the judgment delivered in case of *State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.* reported in *AIR 2015 SC 696*.

In response, Mr. Panja, learned advocate appearing for the WBSEDCL being assisted by Mr. Roy, learned advocate contends that WBSEDCL being an authority has its inherent power to rectify its own error. He asserts that the authority has not acted illegally and the amount was deducted from the retirement benefits of the petitioner in terms of rules in vogue. So, there is no scope before this Court to interfere with the order passed by the General Manager.

Heard learned advocates for the parties. Perused the materials on record.

Record reveals that on attaining the age of superannuation the petitioner retired from service w.e.f. October 31, 2007 and the amount was deducted on the plea that due to mistake committed by the WBSEDCL, excess payment was made to the petitioner. From the order dated 09.05.2008, it transpires that the amount was deducted on the ground that while officiating the post of Ex-Superintendent (L&SS), the petitioner did not exercise

option indicating the date of availing of the benefit of elevation from Scale 7 to Scale 9 and accordingly, as per normal rule, the petitioner was entitled to get such higher scale of pay with effect from 01.02.1999 with designation of Assistant Chargeman (L&SS) and as such he was entitled to avail of that scale of pay with effect from 01.02.1999. He acquired the entitlement to enjoy the benefits of Scale 11 after three years lock-in period, i.e., from 01.02.2002 as per the rules governing the Assured Pension Scheme (APS). Similarly, the petitioner was entitled to enjoy the benefits of the next promotional post, i.e., Superintendent (L&SS) with effect from April 1, 2005 instead of 29.12.2003 and as such, there was an over drawl of that amount.

It is noteworthy that there is no material to show that the petitioner was accessory to the mistake done on the part of the authority concerned or there was any fraudulent act or misrepresentation on his part which contributed to such erroneous fixation of scales of pay. Indisputably, presently, the master-servant relationship, which existed in between the petitioner and WBSEDCL during the petitioner's service tenure of the petitioner, is severed on and from the date of his retirement and in such conspectus, applying the proposition laid down in the judgment of *Rafiq Masih (supra)*, it can be inferred that the authority concerned has misdirected itself in deducting the amount from the retirement benefits of the petitioner.

Situated thus, the order dated May 9, 2008 is set aside and the writ petition is disposed of by directing the

respondent no.3 to refund the money along with interest @ 6% p.a. accrued thereon from the date of presentation of this writ petition, that is, on November 19, 2010 till the date of actual payment thereof within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

All parties are to act on the website copy of this order.

(Partha Sarathi Chatterjee, J.)