

Court No. 2
02.07.2024
Item No.8
(dc)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 1293 of 2024

Chhabi Paul
VS

The State of West Bengal & Ors.

Mr. Debajit Kundu
... for the petitioner.

Ms. Pretom Das,
Mr. Sourav Sarkar
... for the State-respondents.

Affidavit-of-service filed in Court today be kept
with the record.

The writ petition has been preferred against
Memo No. 5351/S dated 3.9.2004 which was issued
by the Assistant Director of Pension, Provident Fund
and Group Insurance, West Bengal wherein it was
contended that there is overdrawal in pay of
Rs.46415/-. In view of the judgement of the Hon'ble
Supreme Court in ***State of Punjab & Ors. Vs. Rafiq
Masih (White Washer) & Ors.***, reported in **(2015) 4 SCC
334**, the case of the petitioner squarely falls within
paragraph 18 of the said judgement which is as
follows :

“**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."

Having considered the law settled by the Hon'ble Supreme Court, the direction of the respondent No.2 upon the respondent No.4 for overdrawal in pay to the extent of Rs.46415/- is hereby quashed.

The petitioner would be entitled to the said amount and the Treasury Officer being the respondent No.4 has no jurisdiction in view of the observations made by the Hon'ble Apex Court (as above).

With the aforesaid observations, the writ petition being WPA 1293 of 2024 is disposed of.

Pending connected application, if any, is consequently disposed of.

There shall be no order as to costs.

All concerned parties shall 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 upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)