03.01.2024
Item No.41
gd/ssd

WPA/2862/2023
DILIP DEB
VS
STATE OF WEST BENGAL & ORS.

Mr. Debajit Kundu,
Mr. Imdadul Biswas
..for the Petitioner.

Mr. Subir Kumar Saha,
Ms. Patralekha Chowdhury
..for the State.

The petitioner retired from service on 31st March, 2021 as a Headmaster of a High School.

The petitioner claims that on the verge of retirement the petitioner was directed to refund a sum of Rs.4,53,550/- to the Treasury as a condition precedent for disbursement of his retiral dues.

The respondent authority alleges that the aforesaid sum of money had been overdrawn by the petitioner during the tenure of his service.

The petitioner deposited the aforesaid amount on 5th December, 2020 vide two treasury challans.

It is not in dispute that the aforesaid overdrawn amount was credited to the account of the petitioner due to wrong pay fixation.

It is not the case of the respondent authority that the petitioner was in any manner responsible for such wrong fixation.

The Hon'ble Supreme Court in the case of *State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.* reported at *(2015) 4 SCC 334* held thus:

> "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, summaries 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."

The said decision is squarely applicable to the facts of the case on hand and applying the ratio of the said decision this court holds that respondent authorities could not have directed refund of the overdrawn amount as a precondition for release of retirement benefits.

This court, therefore, is of the considered view that a direction is to be passed upon the concerned respondent to release the aforesaid amount of Rs.4,53,550/- along with interest thereon at the rate of 8% per annum.

WPA 2862 of 2023 is disposed of by directing the Director of Pension, Provident Fund and Group Insurance, being the 2nd respondent to the writ petition as well as the Treasury Officer, Jalpaiguri-II, being the 3rd respondent to release the aforesaid amount of Rs.4,53,550/- along with interest thereon at the rate of 8% per annum on such amount in favour of the petitioner from the date of refund of the said amount i.e. with effect from 05.12.2020 till the date of such payment.

The payment as directed by this order shall be made within a period of four weeks from the date of receipt of the server copy of this order.

(HIRANMAY BHATTACHARYYA, J.)