

03.01.2024
Item No.43
gd/ssd

WPA/2872/2023
ARATI ROY
VS
STATE OF WEST BENGAL & ORS.

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

Mr. Pretom Das,
Mr. Sandip Guha Roy
..for the State.

The husband of the petitioner was an Assistant Teacher of a Secondary School. He died in harness on 22nd May, 2018. After getting a copy of the pension payment order the petitioner found that a sum of Rs.18,549/- was deducted from his retiral benefit on the ground of overdrawal in pay and allowances.

The petitioner has prayed for refund of such amount with interest.

It is not the case of the respondent State that the petitioner was in any manner responsible for the payment of such overdrawn amount.

The learned advocate for the petitioner submits that the State should not be fastened with the liability of interest as the petitioner has approached this court at a belated stage.

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 respondent authorities could not have deducted the overdrawn amount from the retiral benefit.

Since the petitioner is a widow and her husband died in harness, this court is of the considered view that the delay in filing the writ petition has been satisfactorily explained.

In view thereof, the objection raised by the State for payment of interest is, therefore, rejected.

This court, therefore, directs the concerned respondent to release the aforesaid amount of Rs.18,549/- along with interest thereon at the rate of 8% per annum in favour of the petitioner from the date of issuance of the pension payment order till the date of making such payment.

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

With the above observations, WPA 2872 of 2023 is disposed of.

There shall be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)