26.03.2025
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Ct. no.39
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. 596 of 2024

Santosh Kumar Das
-Vs-
The State of West Bengal & ors.

Mr. Sonkha Ghosh
Mr. Biswarup Nandy
... for the petitioner

Mr. K. N. Nabi
Mr. A. Sarkar
.... for the State

Affidavit of service filed on behalf of the petitioner is taken on record.

On the prayer of the learned Advocate for the petitioner leave is granted to correct the category of the engagement of petitioner in paragraph 9 at page 6 and also in Ground No.V at page 8 of the writ petition.

The writ petition has been filed seeking direction upon the respondent authorities to refund the amount of overdrawal of Rs.1,76,297/- which has been deducted after retirement from service of the employee.

The petitioner contends that he was posted as *Nirman Sahayak* at Begunkodar Gram Panchayat under Jhalda-II Development Block in the pay scale of Rs.4500-150-5250-175-7000-200-8800-225-9700 by the order of the District Magistrate, Purulia and Executive Officer, Purulia Zilla Parishad vide Memo No.544(99)/GP dated

30th May, 2006. The petitioner superannuated on 31st December, 2022 after rendering service of 16 years 6 months and 27 days. After his retirement the petitioner was directed to refund the overdrawal amount of Rs.1,76,297/-. The petitioner by his letter dated 31st January, 2023 requested the respondent no.3, Block Development Officer, Purulia-I Development Block to take necessary steps for deduction of the overdrawal amount of Rs.1,76,297/- from his gratuity. Accordingly, the aforesaid amount was deducted by the pension sanctioning authority from the gratuity amount of the petitioner. Such deduction of overdrawal from gratuity after retirement is illegal. Hence, this writ petition.

Mr. Sonkha Ghosh, learned Advocate for the petitioner submits that the deduction of overdrawal amount of Rs.1,76,297/- from the gratuity of the petitioner after superannuation is illegal and therefore, such amount has to be refunded to the account of the petitioner. In support of his contention he relies on the decision of the Hon'ble Supreme Court passed in ***State of Punjab -versus- Rafiq Masih (White Washer) and others,*** reported in ***(2015) 4 SCC 334.***

Mr. K. N. Nabi, learned Advocate representing the State-respondent concedes the submission advanced on behalf of the petitioner.

Upon perusal of the records placed before this Court it is found that the petitioner superannuated on

31st December, 2022 from the post of '*Nirman Sahayak*'. Admittedly, there has been deduction of the overdrawal amount from the gratuity of the petitioner to the tune of Rs.1,76,297/-, which is also revealed from the e-pension payment order at page 18 annexure P3 to writ petition and such deduction has been made after the retirement of the employee.

Now, it is examined whether such deduction of overdrawal after retirement of the employee from the gratuity of the petitioner is legally valid or not.

To find the answer of the aforesaid query it would be apposite to reproduce the proposition laid down by the Hon'ble Supreme Court in *Rafiq Masih's* case (supra) as hereunder:

> *"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."*

Bearing in mind the aforesaid proposition laid down by the Hon'ble Court, it manifest that recovery from retired employees is impermissible in law. Such being the position, the deduction of overdrawal amount of Rs.1,76,297/- from the gratuity of the petitioner ought not to have been done by the authorities concerned.

Accordingly, the respondent no.3, the Block Development Officer, Purulia-I Development Block and respondent no.4, the Director of Pension, Provident Fund & Group Insurance, Government of West Bengal, are directed to take steps for refund the overdrawal amount of Rs.1,76,297/- which has been deducted from the gratuity of the petitioner together with interest at the rate of 6% per annum from the date of deduction till the date of refund of the same to the bank account of the petitioner within a period of four weeks from the date of communication of this order.

Petitioner is directed to communicate this order to the respondent no.3, the Block Development Officer, Purulia-I Development Block and respondent no.4, the Director of Pension, Provident Fund & Group Insurance, Government of West Bengal and also provide his bank account number to which the aforesaid amount is to be refunded.

With the aforesaid direction, the writ petition being **WPA 596 of 2024** is disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(**Bivas Pattanayak, J**.)