24.03.2025
Ct. 23
M/L 298
ab

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10542 of 2024

Ashok Behara
-Vs-
Calcutta State Transport Corporation & Ors.

Mr. Dilip Kr. Chatterjee,
Mr. Prabir Kr. Chatterjee,
Mr. Durga Bhusan Mukherjee
... for the petitioner

Mr. Amal Kumar Sen,
Mr. Sabyasachi Mondal
... for the CSTC

The petitioner was an employee of Calcutta State Transport Corporation (in short, CSTC), who retired from services on 31st March, 2023. The petitioner says that the final notice of superannuation was given to the petitioner on 11th July, 2022. In the said notice, there was no whisper of any excess payment to the petitioner, which was required to be deducted or adjusted from the retiral dues of the petitioner. The petitioner says that after his retirement, the petitioner was supposed to received a sum of Rs. 37,09,206/- as his settled retiral dues since he was a member of the Contributory Provident Fund (CPF). The petitioner also says that while paying the settled retiral dues, CSTC has deducted a sum of Rs. 3,77,155/- from his gratuity amount of Rs. 11,22,785/- and have paid a sum of Rs. 7,45,630/- only on 2nd November, 2023.

The principal grievance of the petitioner is that the said sum of Rs. 3,77.155/- could not have been deducted on account of excess payment subsequent to his retirement even if the same was paid erroneously is impermissible in view of the ratio laid down in ***2015 (4) SCC 334 (State of Punjab & Ors. Vs. Rafiq Masih (Whitewashers) & Ors).*** The petitioner also says that he is, therefor, entitled to refund and/or payment of the said sum of Rs. 3,77,155/- and the interest accrued thereon from 1st April, 2023 till the actual date of disbursement. The petitioner also claims interest for delayed payment of Rs. 7,45,630/- from 1st April, 2023 till 2nd November, 2023.

On behalf of CSTC, it is submitted that the petitioner was appointed in the post of 'Conductor' with effect from 18th April, 1983 in the scale of 1040-1920. The petitioner got the first higher scale of pay with effect from 4th January, 1994 and was placed in scale of 1140-2160. The second higher scale of pay was given to the petitioner for which the petitioner was placed under the scale of pay of 3800-7755. It is case of CSTC that the petitioner on his prayer was re-designated to the post of "Peon" with effect from 12th May, 2005 in the scale of 2600-7175 vide order no. 354. According to the available record of CSTC, the petitioner's pay was fixed in the scale of 2850-4680 instead of 2600-7175 on the date of his re-designation. The petitioner has retired from services with effect from 31st March, 2025. Due to erroneous fixation of scale of pay, the petitioner received excess payment between 12th May, 2005 to 31st March, 2023. The excess amount is of Rs. 3,77,155/-, which has been deducted from the petitioner's retiral dues. A note issued by the Law Superintendent of CSTC on 16th August, 2024 placed before the Court and the same is taken on record.

After hearing the parties and considering the materials on record, I do not find any substance in the case sought to be made out by CSTC in view of settled position of law in *Rafiq Masih (supra*). The petitioner was a Conductor or a Peon and as such, will be either under 'Group-D' or at the highest "Group-C'. The ratio of *Rafiq Masih (supra)* therefor, squarely applies in the case of the petitioner. Any fixation of scale of pay was made by CSTC. The petitioner had no role to play in the same. There can be as such no mala fide practice adopted by the petitioner to receive the alleged higher scale of pay over a particular period as alleged by CSTC. There has been also no specific undertaking available on record to have been given by the petitioner to CSTC for which the employer can or could have deducted the alleged excess payment at a subsequent stage even after retirement. The petitioner's case, therefor, also stands beyond the exception curved out from the ratio laid down in Rafiq Masih (supra) as has been held by the Hon'ble Supreme Court in its judgment reported in ***2016 (14) SCC 267 (High Court Punjab & Haryana and Ors. Vs. Jagdev Singh).*** The issue of usual and specific undertaking has been considered in a recent judgment delivered by this Court on 22nd December, 2023 in ***WPA 21445 of 2019 (Binoy Bhusan Mondal Vs. The State of West Bengal & Ors.).***

In the aforesaid facts and circumstances, the adjustment and/or deduction of the said sum of Rs. 3,77,155/- is an illegal and void act on the part of CSTC. CSTC is, therefor, directed to disburse and/or repay and/or pay to the petitioner the said sum of Rs. 3,77,155/- by 31st May, 2025 with accrued interest thereon @ 6% per annum from 1st April, 2023 to 31st May, 2025. The petitioner is also entitled to and CSTC is directed to pay interest @ 6% per annum on sum of Rs. 7,45,630/- from 1st April, 2023 till 2nd November, 2023 by 31st May, 2025 in view of delay in paying the said money.

It is made clear that in the event of failure on the part of CSTC to pay the principal sum of Rs. 3,77,155/- and the interest accrued thereon as also the interest on the sum of Rs. 7,45,630/- as directed, the interest rate will stand increased to 10% per annum instead of 6% per annum.

Nothing further remains to be adjudicated in this writ petition. The writ petition is accordingly disposed of.

All parties including CSTC shall act on the server copy of this order without insisting upon production of a certified copy thereof.

(**Arindam Mukherjee, J**.)