IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

05 05.5.2025
Sc Ct. no.2

WPA 15450 OF 2024

Malay Kundu

Vs.

State of West Bengal & Ors.

Ms. Susmita Dey (Basu)
....For the Petitioner

Mr. N. C. Bihani
Mr. Soumyajit Ghosh
Mr. Soumyajit Ghosh
....For the respondents
CSTC

Ms. Susmita Dey (Basu), learned advocate appears for the petitioner.

Mr. N. C. Bihani, learned Senior Counsel with Mr. Soumyajit Ghosh, learned advocate appears for the CSTC employer.

The petitioner at all material time was an employee of the ***Calcutta State Transport Corporation*** (for short the CSTC). He worked as a Conductor being ***Group C*** staff. On ***July 19, 1990*** the petitioner had joined in his employment and had retired on ***March 31, 2023***. After retirement of the petitioner, on ***August 24, 2023, Annexure-P2 at page 12*** to the writ petition, the employer has duly issued the necessary sanction of Gratuity under the relevant provision of the statute. Such sanction shows that, the petitioner is entitled to a sum of ***Rs.9,84,822/-*** on account of Gratuity. The break up is mentioned thereunder. After retirement the petitioner had received a lesser sum for about ***Rs.9,15,291/-*** on account of Gratuity leaving a due of ***Rs.69, 531/-***. Out of the Provident Fund amount, payable to the petitioner, the petitioner has only received ***25%*** of that amount and the balance ***75%*** has not been released in favour of the petitioner.

The petitioner has also not been paid the earned leave encashment benefit (Leave Salary) for a sum of ***Rs.10,446/-***.

On the previous occasion when the matter appeared before the coordinate Bench, the respondent employer was directed to file a report in the form of affidavit. The report has been filed and the same is taken on record. The plea taken in the report shows that, the petitioner was overpaid beyond his entitlement during his employment tenure hence, the deduction has been made resulting in lesser payment being released in favour of the petitioner from his employment benefit.

Ms. Susmita Dey (Basu), learned advocate for the petitioner submits that, prior to the retirement there was no intimation communicated to the petitioner with regard to the alleged plea of overdrawn amount or any amount shall be withheld from the superannuation benefit of the petitioner. She submits that, only after the date of retirement the deduction was made and the petitioner was paid lesser sum. This is not permitted in law. In support, she had relied upon the decision of the Hon'ble

Supreme Court ***In the matter of : State of Punjab and Others –vs.- Rafiq Masih (While Washer) & Ors.,*** reported at ***(2015) 4 SCC 334***.

Mr. N. C. Bihani, learned Senior advocate, at the outset, refers to ***page 57*** from his report to show that a specific undertaking was executed by the petitioner that, in the event any refund is required to be made as overdrawn amount on account of pay fixation or revised pay structure, such excess drawal if comes to the notice of the petitioner, the same shall have to be refundable. He has also relied upon the document being ***Annexure-R/2*** at ***page 56*** from the report which shows how the petitioner was overpaid out of a *bona fide* mistake on the part of the employer.

After considering the rival contentions of the parties and upon perusal of the materials on record it appears to this Court that, admittedly, the petitioner had worked for the employer since ***1990*** till his retirement on ***March 31, 2023***. Record does not show that any charge of overdrawal amount was intimated to the petitioner prior to his retirement.

Provident Fund dues and Gratuity are the properties of the petitioner and payable to the petitioner immediately on his retirement. The Leave Encashment amount is also a benevolent policy of the employer in favour of its employee in the event the employee earned this benefit by not taking leave to which he is otherwise entitled to take in law or under the service condition. The

75% Provident Fund amount is being withheld with the employer, which the employer cannot do.

In the matter of ***Rafiq Masih (supra)*** the Hon'ble Supreme Court has observed as under :

> *"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 a 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 petitioner was a ***Group C*** employee. The employer has for the first time raised its demand, admittedly, after about ***six months*** of retirement of the petitioner. In addition to Provident Fund there will be an amount payable to the petitioner around ***Rs.1,09,818/-***. The recovery of the same shall be totally ***iniquitous*** and ***harsh***, according to the view of this Court in the facts of this case. The balance ***75%*** of the Provident Fund being the property of the petitioner must be and should be released forthwith.

The benefit on account of Leave Encashment to the extent of ***Rs.10,446/-*** also cannot be withheld as the same shall also be ***iniquitous*** and should be paid to the petitioner forthwith.

In view of the above, the ***respondent nos. 5 and 6*** being the responsible and appropriate authorities for making payment while calculating the entire amount on each of such head cumulatively to be paid to the petitioner shall also calculate ***interest @ 6% per annum on and from April 1, 2023 until the actual date of payment*** by crediting the bank account of the petitioner. The entire payment shall be disbursed and paid to the petitioner by crediting the bank account of the petitioner positively within a period of ***six weeks*** from the date of communication of this order.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, ***WPA 15450 of 2024*** stands ***allowed***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)