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03.01.2025
Ct. No. 18
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W.P.A. 29375 of 2024

Anisur Rahaman
Vs.
The State of West Bengal & Ors.

Mr. Sumit Roy
Ms. Moumita Mondal
...for the petitioner

Mr. Durga Bhusan Mukhopadhyay
...for the State

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

Petitioner retired on superannuation on 30th June, 2024 and the grievance of the petitioner is in spite of his superannuation with effect from 1st July, 2024 till date retiral dues including pension have not been released on settlement of pension case. It is submitted that prior to superannuation of the petitioner school authority where petitioner worked submitted pension papers on 27th January, 2024 before the District Inspector of Schools (SE) Malda for taking necessary steps.

Learned advocate representing State-respondents submits that while processing pension case of the petitioner on submission of pension papers by the school authority Director of Pension, Provident Fund and Group Insurance, Uttarkanaya, Jalpaiguri asked the concerned District Inspector of Schools (SE), Malda being respondent no. 3 to forward hard copy of pension file and in response thereto vide memo dated 24th May, 2024 respondent no. 3 forwarded hard copy of pension file to the Director of Pension, Provident Fund and Group Insurance, Uttarkanaya, Jalpaiguri being respondent no. 4. On receipt of pension papers respondent no. 4 raised objection with regard to sanctioning of two incremental benefits in favour of the petitioner which was accorded vide memo dated 1st December, 1998 by the then District Inspector of Schools (SE), Malda. According to the respondent no. 4, the petitioner in terms of Revision of Pay and Allowances Rules, 1998 was not entitled to receive two additional incremental benefits since granting of such benefits had been abolished in terms of said ROPA 1998. Based on such finding respondent no. 4 directed the respondent no. 3 to re-submit pension file of the petitioner with clarification from the School Education Department.

Having considered the submissions made on behalf of the parties it appears that objection raised by respondent no. 4 against sanctioning of two additional incremental benefits was raised after 24th May, 2024 when hard copy of pension file was forwarded by respondent no. 3 to respondent no. 4 whereas petitioner retired on superannuation on 30th June, 2024. However, no case has been made out on behalf of the

State-respondents that resorting to mis-representation and fraud such benefit was availed of by the petitioner rather it appears that in terms of memo dated 1st December, 1998 the then District Inspector of Schools (SE) Malda sanctioned two additional increments in favour of the petitioner and petitioner was in receipt of such benefits from December, 1998 till the date of his superannuation in the month of June,2024.

Whether respondent no. 4 can raise objection with regard to sanction of incremental benefits as accorded in favour of the petitioner vide memo dated 1st December, 1998, this Court is required to find answer from the ratio laid down by the Hon'ble Supreme Court in the judgment reported in **(2015) 4 SCC 334 [State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.].** For better understanding of the issue involved in this writ petition this Court finds it apt to quote paragraph 18 of **Rafiq Masih** (supra) below:-

> *"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:*
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> *(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."*

It has been specifically observed in paragraph 18 that recovery from the employees, when excess payment has been made for a period in excess of five years, before the order of recovery is issued is impermissible. Therefore, objection raised by respondent no. 4 with regard to entitlement of the petitioner to receive incremental benefits which was accorded with effect from December, 1998 is found to be in the teeth of the observation made by the Hon'ble Supreme Court in **Rafiq Masih** (supra). Such objection as raised by the respondent no. 4 is not tenable.

Hence, State-respondents are directed to settle the pension case of the petitioner and the respondent no. 3 is directed to forward pension file of the petitioner, if the same is not forwarded, by fortnight from the date of communication of this order and on receipt of pension file respondent no. 4 is directed to issue Pension Payment Order by fortnight thereafter. Retiral dues including pension shall be released in favour of the petitioner at an early date but not later than 8 (eight) weeks from the date of communication of this order.

However, this order shall not preclude the State-respondents to fix the pension of the petitioner taking note of the eligibility of the petitioner to receive incremental benefits, in accordance with law.

With the aforesaid observations and directions, writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)