24.07.2025
Sl. No.04.
D/L.
Mithun
Ct.No.42.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 30592 of 2024

Bakul Banerjee
Vs.
The State of West Bengal & Ors.

Mr. Biswsarup Nandy
..for the petitioner

Ms. Jhuma Chakraborty
Ms. Rupsa Chakraborty
...for the State

1. The matter is appearing under the heading "*To Be Mentioned.*"
2. Affidavit-of-service filed on behalf of the petitioner is taken on record.
3. On the prayer of the learned Advocate for the petitioner, leave is granted to correct the disbursed amount in the seventh line of Paragraph no.2 and in the fifth line of Paragraph no. 13 both in figures and words.
4. By the present writ petition, the petitioner seeks for a direction upon the respondent authorities to refund a sum of Rs.1,42,116/- along with statutory banking interest till the actual date of realization and also pay interest on delayed payment of arrears of family pension.
5. Petitioner contends as follows. The husband of the petitioner joined the service as "*Job Assistant*" under

Sultanpur-II Gram Panchayat. While in service, he died on 28th July, 2006 leaving behind his wife (the petitioner herein), one daughter and one son. The petitioner had been appointed subsequently on compassionate ground under die-in-harness category and she joined on 26th July, 2010. On 28th June, 2016, the petitioner made representation before the District Magistrate for disbursement of the financial benefit due to her as well as for disbursement of family pension. Since no steps were taken, petitioner was constrained to file a writ petition being WPA No.11689 of 2022.

6. The said writ petition was disposed of on 11th April, 2023 as follows:-

> *"The writ petition is disposed of with the direction upon the Assistant Secretary to the Government of West Bengal, Panchayat and Rural Development Department or any other competent authority to issue the usual approval for preparation of the pension payment order and grant of family pension and other death benefits of the deceased employee. Thus, without further delay, the government approval shall be given so that in the absence of the missing documents, the Directorate of Pension, Provident Fund and Group Insurance can issue necessary orders for release of family pension and other death benefits to the petitioner within a period of two months from the date of communication of this order.*
>
> *The issue of interest on the delayed payment of family pension, gratuity, etc. shall be decided in a separate proceeding and is left open."*

7. Pursuant thereto, the respondent authorities while disbursing payment of the financial benefits made deduction due to salary overdrawn of Rs.1,42,116/-.

8. Being aggrieved and dissatisfied with such action of the respondent authorities, the petitioner has preferred the present writ petition.

9. Mr. Biswarup Nandy, learned Advocate appearing for the petitioner submits that the employee died in the year 2006 and after a lapse of 18 years, such deduction due to salary overdrawn has been made which is impermissible in law. Relying 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***, he submits that such recovery from the employees is impermissible, when excess payment has been made for a period in excess of five years, before the order of recovery is issued. To buttress his contention, he also relies on the decision of this Court passed in ***Santosh Kumar Das versus The State of West Bengal & Ors.*** in ***WPA 596 of 2024***. He seeks for specific direction upon the respondent authority to refund the said amount of Rs.1,42,116/- and for payment of interest on account of delay in payment of arrears of family pension since 2006.

10. Report filed by the State is taken on record.

11. Learned Advocate for the State submits that since an overdrawn has been made by the employee, the respondent authority have deducted such overdrawal which is a public money.

12. Admittedly, late husband of the petitioner died-in-harness on 28th July, 2006 leaving behind his wife (the petitioner herein), one daughter and one son.

Since the financial benefit was not disbursed in favour of the petitioner, she approached this Hon'ble Court being WPA 11689 of 2022. The said writ petition was disposed of with direction upon the Assistant Secretary to the Government of West Bengal, Panchayat and Rural Development Department or any other competent authority to issue the usual approval for preparation of the pension payment order and grant of family pension and other death benefits of the deceased employee. The deduction due to salary overdrawal of Rs.1,42,116/- has been made on 24th May, 2024 (Annexure-'P-6' at Page 35 of the writ petition). Thus, such deduction has been after a lapse of almost 18 years.

13. Now the question which needs to be examined is whether the deduction of overdrawal salary from death gratuity of the petitioner is legal, proper, valid or not.

14. At this stage, it would be profitable to refer to the observation of Hon'ble Supreme Court in *Rafiq Masih (supra)* referring to an earlier decision of the Hon'ble Supreme Court in ***Shyam Babu Verma versus Union of India*** reported in ***(1994) 2 SCC 521*** as hereunder:-

> *"**14.** In this context, reference may also be made to the decision rendered by this Court in Shyam Babu Verma v. Union of India, wherein this Court observed as under: (SCC pp. 525-26, para 11)*

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1-1-1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1-1-1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same." (emphasis supplied)

It is apparent, that in Shyam Babu Verma case, the higher pay scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984 i.e. after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India."

15. Further in order to appreciate the issue, it would be apposite to reproduce the proposition laid down by the Hon'ble Supreme Court in *Rafiq Masih (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. Bet 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."

16. Bearing in mind the aforesaid propositions laid down by the Hon'ble Supreme Court, it is found that such recovery is impermissible in law. Such being the position, the deduction due to salary overdrawal amount of Rs.1,42,116/- from the death gratuity of the husband of the petitioner after lapse of 18 years of his death ought not to have been deducted by the authority concerned.
17. Accordingly, the respondent no.5, the Director, Pension, Provident Fund & Group Insurance, Government of West Bengal is directed to take steps for refund of the amount of Rs.1,42,116/- to the bank account of the petitioner which has been deducted due to overdrawal of salary from the death gratuity of the husband of the petitioner, within a period of four weeks from the date of communication of this order. The respondent authority is further directed to pay interest @ 7% per annum on the arrears of family pension and all other financial benefits receivable by the petitioner since it has fallen due in the year 2006 till the date of actual payment.
18. The petitioner is directed to communicate this order to respondent no.5, the Director, Pension, Provident Fund & Group Insurance, Government of West Bengal and also provide bank account number of the

petitioner to which the aforesaid amount has to be refunded.

19. With the aforesaid direction, the writ petition being **WPA 30592 of 2024** is disposed of.

20. All connected applications, if any, stands disposed of.

21. Interim order, if any, stands vacated.

22. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bivas Pattanayak, J.)