(2008) 04 CAL CK 0068

In the Calcutta High Court

Case No : Writ Petition No. 15274 (W) of 2007

Jayanti Sengupta APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Citation : (2008) 04 CAL CK 0068

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Chandra Sekhar Bag, Jasojeet Mukherjee, S. Basu, for the Appellant;Sriparna Ghosh Dastidar for the State, for the Respondent

Judgement

Sanjib Banerjee, J.

The Judgment of the Court was as follows:

1. The matter had been adjourned on January 21, 2008 on the fair submission made on behalf of the State that a justification as to the deduction would be attempted only upon instructions being obtained from the appropriate department.

2. The matter next appeared on April 1, 2008 when further time was sought on behalf of the State. Counsel for the State submits that no instructions have been forthcoming. It is understandable why no instructions have been forthcoming.

3. The petitioner retired on January 31, 2004. The petitioner last held the post of Assistant Teacher. In the calculations furnished by the Finance Department upon the petitioner''s superannuation, a sum of Rs. 1,61,484.16p. was deducted from the retiral benefits of the petitioner on the ground of "overdrawal in pay etc." The petitioner instituted W.P. 814(W) 2005 before this Court.

4. The earlier writ petition was disposed of by an order dated September 15, 2005 where the Court recorded that since no affidavit had not been filed on behalf of the respondents despite directions being given, there was nothing to

show how such sum could be deducted from the petitioner''s retrial dues. As in the present case, the Court recorded in the order of September 15, 2005 that counsel appearing for the State appeared to be in the dark. The earlier petition was disposed of by directing that the deduction of Rs. 1,61,484.16p. to be deleted by giving liberty to the State respondents to realize the outstanding amount, if any, from the petitioner.

5. The petitioner has been subsequently informed by a writing dated September 25, 2006 issued by the District Inspector of Schools (SE), Burdwan, that the amount deducted from the petitioner''s retrial dues was on account of overdrawal for house rent allowance from May 3, 1981 to November 30, 2003 to the extent of Rs. 1,61,450.80p. and overdrawal of pay and allowance from May 16, 1968 to June 17, 1970 to the extent of Rs. 33.35p. Apart from the obvious arithmetical mistake in that the sum of the two figures do not add up to the amount deducted, (even if it is only one paise), there is no indication that such claims were made on the petitioner prior to his retirement.

6. The settled position of law is that a State employer may not deduct any money out of the retrial benefits of an employee, but may otherwise pursue its claim. It does not appear and in the absence of instructions given by the appropriate department to Counsel appearing for the State that it cannot, be gauged - that the petitioner was informed prior to his retirement that such sum remained due from the petitioner to the employer. But it is not necessary to assess whether the employer was justified in making the claim, once it is recognized that such deductions cannot be made out of the retrial benefits or dues payable upon retirement.

7. The writ petition is disposed of by directing the State-respondents to pay the petitioner the sum of Rs. 1,61,484. 16p. that was withheld from the petitioner''s retrial benefits together with interest at the rate of 10% per annum thereon from the date that the remainder of the retrial dues was paid.

8. It will be open to the State-respondents to identify the person who was responsible for making the deductions and to realize the interest that the State is required to pay the petitioner from such recalcitrant employee. It will also be open to the State-respondents to otherwise enforce the claim that appears from the letter of September 25. 2006.

9. The writ petition is disposed of on the above basis with costs assessed at 500 GMs to be paid by the State.

10. Urgent certified Photostat copy of this order be made available to the parties upon compliance with all requisite formalities.

W.P. No. 15274(W) 2007

Chandra Sekhar Bag, A. Pal for the petitioner

1. The matter has been put up following a note by the department that there is a

mistake in the order dated April 8, 2008.

2. In the lost page (page-3) of the order, the figure has been erroneously mentioned as Rs. 1,51,484.16p. though the figure should be read as Rs. 1,61,484.16p. as will appear from the earlier pages.

3. The order dated April 8, 2008 should be corrected by correcting the figure as aforesaid in the forth last paragraph of the order.

4. Urgent certified photostat copy of this order be made available to the parties upon compliance with all requisite formalities.

Sanjib Banerjee, J.

