(2018) 01 CAL CK 0090

In the Calcutta High Court

Case No : 30716(W) of 2017

Shibnath Santra & Ors. APPELLANT

Vs

The State of West Bengal & Ors. RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

Citation : (2018) 01 CAL CK 0090

Hon'ble Judges : Samapti Chatterjee

Bench : Single Bench

Advocate : Sabita Khutia, Rajendra Chaturvedi

Final Decision : Allowed

Judgement

1. The affidavit of service filed by the learned Advocate for the petitioners in Court today be kept on record. The petitioners have filed the present writ petition for a direction upon the respondent no. 2, the Director of Pension, Provident Fund & Group Insurance, Government of West Bengal to refund the deducted amount of Rs. 10,717/- with interest at the rate of 18% per annum from the date of retirement of the father of the petitioners till the date of payment and re-fix his/her pension accordingly.

2. The petitioners'' case in short as follows that the father of the petitioners was an employee of the concerned School. After completion of service, the father of the petitioners retired from service on 31.5.1996 as the father of the petitioners attended the age of superannuation and he died on 7.5.1998. After retirement of the father of the petitioners the concerned authority has prepared the father of the petitioners'' papers for pension but the said pension papers were withheld. For the reason, the father of the petitioners has drawn excess amount due to wrong fixation of the father of petitioners'' pay scale during his/her service tenure and the authority forced the father of the petitioners to refund the overdrawal amount. It also appears that the concerned authority reduced the father of the petitioners'' pay drawn at the time of retirement of the father of the

petitioners and calculated the overdrawal amount of Rs. 10,717/-. Thereafter the Pension Payment Order was issued by the Assistant Director of Pension, Provident Fund and Group Insurance vide Memo dated 28.12.2001 wherefrom it reveals that the authority had deducted the father of the petitioners'' basic pay drawn at the time of retirement and deducted the amount of Rs. 10,717/- from the father of the petitioners'' retirement benefits but before deduction no opportunity of hearing as well as notice was ever given to the petitioners for refund. Only after retirement from the Pension Payment Order it is found that Rs. 10,717/- had been deducted from the father of the petitioners'' retirement benefits.

3. Learned Advocate appearing for the petitioners submits that it is a settled law laid down by the Hon''ble Supreme Court in several cases which has been time to time followed by the Hon''ble Division Bench as well as the learned Single Bench of this Hon''ble Court in several decisions.

4. In support of his/her contention, learned Advocate for the petitioner relied on the decisions reported in 1994(2) SCC 521 (Shyambabu Verma & Ors.-vs- Union of India & Ors.) and 2009(3) Supreme Court Cases 475 (Syed Abdul Qadir & Ors. -vs- State of Bihar & Ors.). He/she also relied on the latest Supreme Court decision reported in 2015 (1) Supreme Today 671 (State of Punjab & Ors. -vs- Rafiq Masih (White Washer) etc.). Paragraph 12 at pages 19 and 20 of the aforesaid decision is quoted below : "12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payment have mistakenly been made by the employer, in excess of their entitlement. Be that it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(i) Recovery from employees belonging to Class -III and Class -IV service (or Group ''C'' and Group ''D'' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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."

5. Learned Advocate for the petitioner also relied on the Hon''ble Division Bench decision passed on 9th September, 2013 in W.P.S.T. No. 216 of 2013 (State of

West Bengal & Ors. -vs- Asis Das Gupta). Learned Advocate for the petitioners further contends that the point raised by the learned Advocate for the petitioner that after long time the petitioners approached this Hon''ble Court, therefore, the writ petition should be dismissed on the sole ground of delay for approaching before this Hon''ble Court.

6. After demolishing the argument of the State respondents, learned Advocate for the petitioners contends that since it is a fault on the part of the respondent authority where the petitioners were not the parties and moreover the petitioners were not at all informed by the authority and no opportunity was given to the petitioners by the authority before such deduction, therefore, the argument advanced by the learned Advocate for the State respondents that the petitioners came late before this Hon''ble Court cannot be sustained. In support of his/her contention, Learned Advocate for the petitioners relied on one unreported judgement passed by the Hon''ble Division Bench in M.A.T. No. 1067 of 2010 (Smt. Nanda Rani Das -vs- State of West Bengal & Ors.) where the Hon''ble Division Bench after considering the Hon''ble Supreme Court decision reported in 2008(8) Supreme Court Cases 648 (Union of India -vs- Tarsem Singh) held as follows : "It is true that the aforesaid overdrawn amount was deducted in the year 2001 and the petitioner approached before this Court after lapse of nine years. However, on account of the aforesaid delay no third party right has accrued and it is only the petitioner who suffered due to non-payment of the aforesaid amount by the respondent authorities.

In the case of Union of India vs. Tarsem Singh, reported in (2008) 8 Supreme Court cases, 648, the Hon''ble Supreme Court observed as follows :

For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others delay would render the claim scale and doctrine of laches/limitation will be applied."

7. Learned Advocate appearing for the State respondents submits on instruction that the State Authority is not an obligation to refund the amount which has been deducted as it was wrongly given by the State Authority. Therefore, since the petitioner is not entitled to enjoy this amount which was wrongly given by the State Authority when it was detected then the State Authority has the right to deduct from the father of the petitioners'' retirement benefits.

8. Therefore, in conclusion learned Advocate for the State respondents submits that the father of the petitioners is not entitled to get any refund as he/she was wrongly allowed by the State Authority to enjoy the said amount for which he/ she is not entitled to.

9. Considering the submissions advanced by the learned Advocates for the respective parties and after perusing the records and averments and also after considering the decisions of the Hon''ble Supreme Court in the case of Syed

Abdul Qadir; Rafiq Masih and Tarsem Singh (supra), I am of the view that the amount which was wrongly deducted by the authority from the father of the petitioners'' pensionary benefits without giving an opportunity of hearing to the father of the petitioners when the father of the petitioners is very much in service cannot be accepted.

10. In the present case, therefore, deduction from the gratuity amount of the father of the petitioners cannot affect the rights of any third party and following the aforesaid decisions of the Hon''ble Supreme Court and the Hon''ble Division Bench of this Hon''ble Court, I am inclined to grant relief to the father of the petitioners in spite of the delay.

11. In view of the decision of the Hon''ble Supreme Court in the case of Shyambabu Verma & Ors. (supra) and also in the subsequent decision in the case of Syed Abdul Qadir (supra), I hold that in the facts of the present case, recovery of excess amount cannot be allowed after retirement of the employee concerned since the said excess amount was not paid on account of any misrepresentation or fraud on the part of the petitioners.

12. Therefore, the aforesaid deduction of the overdrawn amount of Rs. 10,717/- from the retirement benefits of the father of the petitioners after retirement cannot be approved by this Court. Therefore, I hold that the impugned deduction by the respondent authority is bad in law. The respondent authorities are, therefore, directed to pay the aforesaid overdrawn amount of Rs. 10,717/- to the petitioners within a period of eight weeks from the date of communication of this order. With the aforesaid direction, this writ petition is allowed. There will be no order as to costs.

13. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.