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Constitutional Writ
Present: The Hon'ble Mr. Justice Jayanta Kumar Biswas
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Judgment On 11-03-2010

W.P.No.13403(W) of 2008

Chitta Ranjan Ghosh
v.
The State of West Bengal & Ors.

POINTS:

Overpayment of retirement benefits------Recovery of payment made to the petitioner without any opportunity of hearing -----No allegation of fraud ------Such recovery whether acceptable after retirement -------Service Law

FACTS:

 On reaching the age of superannuation the petitioner retired from service. Till before retirement no allegation of overpayment was made by anyone. Without any notice and hearing the respondents recovered the overpaid amount, mentioned in the pension payment order, from the pension arrears and gratuity. It was not stated when and how the overpayment took place. The respondents have been given opportunity of contesting the petition by filing opposition. There is nothing to say that they are contesting the petitioner's case that the amount in question was wrongfully recovered.

HELD:

It is nobody's case that any overpayment was made because of any misrepresentation or fraud exercised by the petitioner. Their Lordships of the Supreme Court have laid down the law that an employer is not entitled to recover any overpaid amount from his former employee's retirement benefits, unless the overpayment took place because of any misrepresentation or fraud exercised by the employee. In my opinion, the principle will apply to this case. The Court, therefore, holds that the petitioner is entitled to refund of the recovered amount with interest. For these reasons, the court allows the petition and order as follows.Within four weeks from the date of communication of this order the Director of Pension, Provident Fund & Group Insurance, West Bengal shall refund the recovered amount, recalculate the retirement benefits on the basis of the employee's pay at the date of retirement and pay balance benefits, if any, with interest @ 6% p.a. from the date of retirement till the date of actual payment.

Paras----4&5

CASES CITED:

Syed Abdul Qadir & Ors. v. State of Bihar & Ors.,2009 (1) Supreme 163

Mr Sourav Mitra …for the petitioner

THE COURT

1.The petitioner in this art.226 petition is questioning the action of the respondents who have recovered an amount from the retirement benefits alleging overpayment.

2. On reaching the age of superannuation the petitioner retired from service. Till before retirement no allegation of overpayment was made by anyone. Without any notice and hearing the respondents recovered the overpaid amount, mentioned in the pension payment order, from the pension arrears and gratuity. It was not stated when and how the overpayment took place.

3. The respondents have been given opportunity of contesting the petition by filing opposition. There is nothing to say that they are contesting the petitioner's case that the amount in question was wrongfully recovered.

4.It is nobody's case that any overpayment was made because of any misrepresentation or fraud exercised by the petitioner. In Syed Abdul Qadir & Ors. v. State of Bihar & Ors., 2009 (1) Supreme 163, their Lordships of the Supreme Court have laid down the law that an employer is not entitled to recover any overpaid amount from his former employee's retirement benefits, unless the overpayment took place because of any misrepresentation or fraud exercised by the employee. In my opinion, the principle will apply to this case. I, therefore, hold that the petitioner is entitled to refund of the recovered amount with interest.

5. For these reasons, I allow the petition and order as follows. Within four weeks from the date of communication of this order the Director of Pension, Provident Fund & Group Insurance, West Bengal shall refund the recovered amount, recalculate the retirement benefits on the basis of the employee's pay at the date of retirement and pay balance benefits, if any, with interest @ 6% p.a. from the date of retirement till the date of actual payment. No costs. Certified xerox according to law.

(Jayanta Kumar Biswas, J.)