

Consti tuti onal Wri t
Present : The Hon'ble Mr Justice Jayanta Kumar Biswas
Judgment on : June 10, 2010
W.P.No.11767(W) of 2010
Kshirswari Roy
-vs-
The State of West Bengal & Ors.

POINTS

Recovery of amount – Petitioner's husband was a school teacher – Pension payment order recorded recovery of amount – No steps taken by the petitioner's husband for refund of the money – Writ Petition for refund of the same – Delay , if a relevant factor in case of violation of natural justice – Petitioner if has any independent right of action – Constitution of India, Article 226.

FACTS

The petitioner's husband was a primary school teacher. He retired from service on January 31, 1994. The pension payment order was issued on July 2, 2001. In the order the recovery of the amount was recorded. The teacher received the benefits in terms of the pension payment order without any protest. He did not demand refund of the recovered amount. As a matter of fact, he did not take any step whatsoever during his lifetime. Petitioner filed this petition for refund of the said amount .

HELD

There is no merit in the argument that the question of delay is not relevant as the amount was recovered in violation of the principals of natural justice . The teacher, the only person who could be aggrieved, if at all, by the recovery, never said in any manner that he was aggrieved by the recovery. He accepted the decision of the state. The petitioner has no independent right of action.

Para 7

CASES CITED

September 11, 2007 in W.P.No.7387(W) of 2007 (Bhona Khan v. The State of West Bengal & Ors.),

Mr. Sakti Pada Janafor the petitioner

Mr. Chowdhury Faruk Alifor the state

THE COURT : 1)The petitioner in this art.226 petition dated June 7, 2010 is seeking a mandamus commanding the respondents to refund her Rs.85,890 recovered from her husband's retirement benefits on account of overpayment.

2)The petitioner's husband was a primary school teacher. He retired from service on January 31, 1994. The pension payment order was issued on July 2, 2001. In the order the recovery of the amount was recorded.

3)The teacher received the benefits in terms of the pension payment order without any protest. He did not demand refund of the recovered amount. As a matter of fact, he did not take any step whatsoever during his lifetime.

4)The petitioner has not stated when her husband died. Counsel produces a certificate of death showing that the teacher died on January 20, 2008. It appears that certain undisclosed thing prompted the petitioner to file this petition all of a sudden on June 7, 2010.

5)With a view to explaining the delay, in para.15 of the petition she has stated as follows.

"15. Your petitioner states and submits that due to her prolonged illness she could not take any steps against the impugned deduction and she could not also take

legal advice regarding recovery of such deductible amount.”

6) Relying on the case stated in para.15 and a single bench decision dated September 11, 2007 in W.P.No.7387(W) of 2007 (Bhona Khan v. The State of West Bengal & Ors.), counsel for the petitioner submits that the question of delay is not relevant, since the amount was recovered without giving the teacher any notice and hence in violation of the principles of natural justice.

7) There is no merit in the argument. The teacher, the only person who could be aggrieved, if at all, by the recovery, never said in any manner that he was aggrieved by the recovery. He accepted the decision of the state. The petitioner has no independent right of action.

8) The case stated in para.15, not supported by any material, is of no consequence, especially because it is evidently a made to fit untrue word for word case stated in para.15 of as many as three other art.226 petitions the same advocate has filed seeking similar relief.

9) The three petitions are there : W.P.No.11763(W) of 2010 (Ramani Mohan Roy v. The State of West Bengal & Ors.), W.P.No.11765(W) of 2010 (Basudeb Halder v. The State of West Bengal & Ors.) and W.P.No.11769(W) of 2010 (Prafulla Chandra Saha v. The State of West Bengal & Ors.)

10) As to the single bench decision, I do not think the ratio thereof can be applied to the case of the petitioner who, having no independent right to seek refund of the recovered amount, cannot be considered a person aggrieved by the decision of the state. In my opinion, writ powers under art.226 of the constitution should not be exercised for adjudicating such a stale issue as the one involved in this case.

11) For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J)

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