

Constitutional Writ
Present : The Hon'ble Mr Justice Jayanta Kumar Biswas
Judgment on : June 10, 2010
W.P.No.11778(W) of 2010
Amulya Charan Purkait
-vs-
The State of West Bengal & Ors.

POINTS

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

FACTS

The petitioner was a primary school teacher. He retired from service on January 31, 1992. The pension payment order was issued on December 12th, 2000. 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 . Even if the amount was recovered without giving the petitioner any notice, he could not approach the writ court questioning the decision of the state to recover the amount on account of overpayment, around nine years after the recovery without explaining the delay.

Para 5

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 8, 2010 is seeking a mandamus commanding the respondents to refund him Rs.26,588 recovered from his retirement benefits on account of overpayment.

2)The petitioner was a primary school teacher. He retired from service on January 31, 1992. The pension payment order was issued on December 12, 2000. In the order the recovery of the amount was recorded.

3)The petitioner 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 until all of a sudden he filed this petition.

4)Relying on 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 petitioner any notice and hence in violation of the principles of natural justice.

5)I do not find any reason to agree. Even if the amount was recovered without giving the petitioner any notice, he could not approach the writ court questioning the decision of the state to recover the amount on account of overpayment, around nine years after the recovery without explaining the delay.

6)As to the single bench decision, I do not think the ratio thereof can be applied to the case of the petitioner who by his own conduct forfeited his right, if any, to seek refund of the recovered amount. 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.

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

(Jayanta Kumar Biswas, J)

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