

CONSTITUTIONAL WRIT

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on : June 10, 2010

W.P.No.11765(W) of 2010

Basudeb Halder

-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 Secondary school teacher. He retired from service on August 31st , 2004 . The pension payment order was issued on September 7th , 2004. 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 6

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.95,700 recovered from his retirement benefits on account of overpayment.

2)The petitioner was a secondary school teacher. He retired from service on August 31, 2004. The pension payment order was issued on September 7, 2004. 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)With a view to explaining the delay in para.15 of the petition he has stated as follows :

“15. Your petitioner states and submits that due to his prolonged illness he

could not take any steps against the impugned deduction and he could not also take legal advice regarding recovery of such deductible amount.”

5)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 petitioner any notice and hence in violation of the principles of natural justice.

6)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 six years after the recovery without explaining the delay.

7)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.

8)The three petitions are : W.P.No11765(W) of 2010 (Basudeb Halder v. The State of West Bengal & Ors.), W.P.No.11767(W) of 2010 (Kshirswari Roy 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.)

9)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.

10)For these reasons, the petition is dismissed. No costs. Certified xerox.
(Jayanta Kumar Biswas, J)

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