

***Constitutional Writ***

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on : June 10, 2010

W.P.No.11775(W) of 2010

Smt. Mohini Rani Hazrah

-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 July 31, 1994. The pension payment order was issued on March 26, 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 principal's 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 6

**CASES CITED**

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

Mr. Subhrangshu Panda ....for the petitioner

Ms. Asha G. Gutgutia

Mrs. Nilima Das .....for 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 her Rs.66,570 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 July 31, 1994. The pension payment order was issued on March 26, 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 August 8, 2009. It appears that certain undisclosed thing prompted the petitioner to file this petition all of a sudden on June 7, 2010.

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

6) 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.

7) 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.

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

**(Jayanta Kumar Biswas, J)**

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