

**CONSTITUTIONAL WRIT**

**Present: The Hon'ble Justice S.P. Talukdar**

**Judgment on : 25.03.2010.**

**W.P. No. 10885 (W) of 2008**

**Sachindra Nath Maiti**

**Vs.**

**The State of West Bengal & Ors.**

**With**

**W.P. No. 10624 (W) of 2008**

**Biswanath Mondal**

**Vs.**

**The State of West Bengal & Ors.**

**With**

**W.P. No. 10253 (W) of 2008**

**Bijay Kumar Giri**

**Vs.**

**The State of West Bengal & Ors.**

**With**

**W.P. No. 17692 (W) of 2008**

**Sudhanwa Kumar Mandal**

**Vs.**

**The State of West Bengal & Ors.**

**With**

**W.P. No. 10625 (W) of 2008**

**Biswanath Sarkar**

**Vs.**

**The State of West Bengal & Ors.**

**With**

**W.P. No. 10626 (W) of 2008**

**Madan Mohan Kundu**

**Vs.**

**The State of West Bengal & Ors.**

**With**

**W.P. No. 10628 (W) of 2008**

**Somesh Chandra Khan**

**Vs.**

**The State of West Bengal & Ors.**

**POINTS:**

PENSION-Petitioner retired from service-Amount shown as overdrawn deducted from gratuity amount-Fixation of pay-scale not done by the concerned individual employee-No opportunity of hearing granted to petitioner-Respondent, whether justified in deducting the said amount-West Bengal Recognized Non-Government Educational Institution Employees' (Death-cum-Retirement Benefit) Scheme, 1981.R 45

**FACTS:**

After rendering 21 years of service and on attaining the age of superannuation the petitioner retired from service. The respondent authorities issued the pension payment order after about four months of his retirement. It could be found from the said order that an amount had been shown as 'overdrawn' and the said amount was deducted from his gratuity amount. The petitioner was not granted any opportunity of hearing. The petitioner submitted a representation, which, however, did not receive the care and attention it deserved. Such illegal and arbitrary action on the part of the respondent authority left the petitioner with no choice but to seek redress before the Court.

**HELD:**

It is well settled that grant of pensionary benefits is no charity. But how can one dispute that getting of pension in most cases becomes a matter of hard struggle on the part of a retired employee. He has to move from post to pillar and pillar to post in order to get such pension. Unless there is conscious fault on the part of an employee or any act of fraud or misrepresentation on his part, such employee does not certainly deserve to be struck with such a severe blow, affecting his right to live with dignity and that too, at this belated stage. Para-39

Ordinarily, fixation of pay-scale is not done by the concerned individual employee and it is the responsibility of the authority, which presumably have the expertise in this matter. Para-41

It is just and proper to brush aside the allegations made in the various writ applications under reference and in the considered opinion of this Court, it was not on the part of the State authorities for deducting various amounts of money on the ground of alleged overdrawal and that too, in the backdrop of the specific facts and circumstances. Para-43

**CASES CITED:**

- 1) Gorakhpur University & Ors. Vs. Dr. Shitla Prasad Nagendra & Ors.,(2001) 6 SCC 591.
- 2) Union of India & Ors. Vs. Tarsem Singh, (2008) 8 SCC 648.
- 3) Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors., 2009(1) Supreme 163
- 4) Normi Topno Vs. State of Jharkhand & Ors., as reported in 2008 (6) SLR 397
- 5) Kalyan Kumar Chattopadhyay Vs. The State of West Bengal & Ors., 2006 (WBLR) 1 (Cal) 591.
- 6) Abha Acharyya Vs. State of West Bengal & Ors. W.P. No. 10750(W) of 2007
- 7) Satya Ranjan Das Vs. State of West Bengal & Ors. W.P. No. 9537 (W) of 2007.
- 8) Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise, Baroda, AIR 1991 SC 754.
- 9) State Vs. Hospital Mazdoor Sabha, AIR 1960 SC 610
- 10) Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors., 2009 (1) Supreme 163.
- 11) Videsh Sanchar Nigasm Limited & Anr. Vs. Ajit Kumar Kar & Ors., 2008 (11) SCC 591
- 12) V. Gangaram Vs. Regional Joint Director & Ors., 1997 (6) SCC 139.
- 13) Municipal Council Vs. Shah Hyder Beig, 2000 Vol-2 SCC 48.
- 14) Trilok Chand Vs. H.B. Munshi, AIR 1970 Sc 898.

15) Union of India Vs. S.R. Dhingra & Ors., 2007 (8) Supreme 437.

16) The Secretary to Government Agriculture & Co-operation & Ors. Vs. K.

Kesavulu, 2007 (8) Supreme 683.

17) Regional Manager, A.P. SRTC Vs. N. Satyanarayana & Ors., 2008 (1) SCC

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For the Petitioner: Mr. Subir Sanyal,  
(in W.P.10885 (w)/08) Mr. Sourav Mitra.

For the State : Ms. Asha G. Gutgutia,  
(in W.P.10885 (w)/08) Mr. Kanai Lal Samanta,  
Mr. Haridas Das,  
Mrs. Nilima Das.

For the Petitioner : Mr. Subir Sanyal,  
(in W.P.10624 (w)/08) Mr. Sourav Mitra.

For the State : Miss. Arati Ghosh,  
(in W.P.10624(w)/08) Mr. M. P. Chakraborty.

For the Petitioner: Mr. Subir Sanyal,  
(in W.P. 10253 (w)/08) Mr. Sourav Mitra.

For the State : Mr. Arunava Banjeree.  
(in W.P.10253 (w)/08)

For the Petitioner : Mr. Kamalesh Bhattacharya,  
(in W.P.17692 (w)/08) Mr. Saibal Acharya,  
Mrs. Sabita Khutia (Bhunya).

For the State : Mrs. Husnara Begum.  
(in W.P.17692(w)/08)

For the Petitioner : Mr. Sourav Mitra.  
(in W.P.10625 (w)/08)

For the State : Ms. Manisha Mukherjee.  
(in W.P.10625 (w)/08)

For the Petitioner: Mr. Sourav Mitra.  
(in W.P.10626 (w)/08)

with  
(W.P.10628 (w)/08)  
For the State : Mrs. Syamali Kandari,  
(in W.P.10626 (w)/08) Mrs. Suchitra Saha Roy,  
with Mr. Choudhury Faruk Ali.  
(W.P.10626 (w)/08)

**THE COURT:**

1) In W.P. No. 10885 (W) of 2008, the petitioner approached this Court with an application under Article 226 of the Constitution praying for direction upon the respondent authority to repay the alleged overdrawn amount of Rs.1,36,858/- to the petitioner together with interest thereon.

2) Grievance of the petitioner, as ventilated in the application, may briefly be stated as follows :-

After rendering 21 years of service and on attaining the age of superannuation on 28<sup>th</sup> February, 2005, the petitioner retired from service. During his service period, he used to be given increments from time to time and his scale of pay was also revised under the Revision of Pay & Allowance Rules on the basis of the option exercised by him and approved by the competent authority. He had no role to play in the matter of fixation of his pay scale. The respondent authorities issued the pension payment order after about four months of his retirement. It could be found from the said order that an amount of Rs. 1,36,858/- had been shown as 'overdrawn' and the said amount was deducted from his gratuity amount. The petitioner was not granted any opportunity of hearing. Question of recovery of any alleged overdrawn amount from the pensionary benefit could hardly arise since after retirement, relationship of employer and employee came to an end. The petitioner submitted a representation, which, however, did not receive the care and attention it deserved. The State, being a Model employer, cannot take advantage of any declaration or undertaking regarding recovery of any overdrawn amount. Such illegal and arbitrary

action on the part of the respondent authority left the petitioner with no choice but to seek redress before the Court.

3) As against this, respondent Nos. 1 to 4 and No. 6 contested the case by filing Affidavit-in-Opposition wherein all the material allegations made by the petitioner had been denied. It had been claimed that the pay of the petitioner was wrongly fixed at Rs.1,665/- on 1.1.1991 instead of Rs. 1,610/-. In view of such wrong fixation, the pay of the writ petitioner was wrongly fixed from time to time till 31<sup>st</sup> December, 2003. The pension papers submitted by the School Authority in the office of the District Inspector of Schools (Secondary Education), Purba Medinipur, were verified by the Joint Director of Accounts and on verification such mistake was detected. All the papers were accordingly returned to the School Authority in order to enable them to recast the pay structure. Accordingly, the Headmaster calculated the overdrawn amount and submitted the same to the office of the District Inspector of Schools for the purpose of forwarding the same to the office of the Director of Pension, Provident Fund and Group Insurance for issuance of pension payment order. Accordingly, pension payment order was issued wherein a sum of Rs. 1,36,858/- was deducted from gratuity, which was paid to the petitioner on 15.6.2005. The respondent claimed that a mistake does not confer any right to any party and subsequent rectification of such mistake cannot be grudged. The petitioner retired on 31<sup>st</sup> March, 2004 and the pension payment order was issued on 19.1.2005 but the writ application was filed in 2008. The writ application, thus, is not maintainable on the ground of delay. The petitioner gave an undertaking that he would return any excess drawal. He did not raise any objection at the time of receiving the pension payment order. He received the same and did not challenge the calculation of overdrawal amount for the period from 1<sup>st</sup> January, 1991 to 31<sup>st</sup> December, 2003. The respondent, thus, categorically denied that the petitioner is entitled to any further relief in this case.

4) The writ petitioner by filing Affidavit-in-Reply took the plea that after cessation of relationship of the employer and employee, the authority cannot deduct such alleged overdrawn amount from the retiral benefit of the employee. He further claimed that even assuming that there had been any mistake committed, since the petitioner could not have had any hand in it, such deduction of alleged overdrawn amount was not permissible.

5) Mr. Sanyal, appearing as learned Counsel for the petitioner, submitted that the petitioner made a representation on 18<sup>th</sup> April, 2008 alleging that such deduction of alleged overdrawn amount was illegal, arbitrary, unauthorized and unjust. Petitioner claimed that he could not in any way be involved in fixation of his pay or in the grant of his increment.

6) Mr. Sanyal quite rightly submitted that in the facts and circumstances of the case, this Court is called upon to adjudicate whether any amount in the guise of overdrawn in pay can be deducted from the gratuity of the writ petitioner, who was an Assistant Teacher of an aided school after his retirement and whether the provisions of Rule 140 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 can be pressed into by the respondents. It was submitted that there is no allegation that the petitioner could have had any hand in it. It had never been alleged that the alleged overpayment was made due to any misrepresentation or fraud exercised by the employee.

7) Mr. Sanyal referred to the decision of the Apex Court in the case between **Gorakhpur University & Ors. Vs. Dr. Shitla Prasad Nagendra & Ors., as reported in (2001) 6 SCC 591** in support of his contention that the respondent authority cannot be permitted to recover such alleged overdrawn amount according to whims and that too, without giving the writ petitioner a chance of hearing. In the said case, certain amount was sought to be realized or adjusted from the retiral benefits because of its overstay in the University accommodation. The Apex Court held that in

absence of any legal action being taken to recover possession of the said accommodation and since penal rent was not fixed, any action towards adjustment of certain amount from the retiral benefit was not permissible.

8) In course of submission, reference was also made to the decision in the case between **Union of India & Ors. Vs. Tarsem Singh, as reported in (2008) 8 SCC 648**. The Apex Court in the said case held that the claims relating to service matter are normally rejected either on limitation where limitation period is prescribed, or on the ground of delay/laches where there is no limitation. An exception to this principle is in the cases of continuing wrong, which can be entertained despite delay.

9) Mr. Sanyal, thus, sought to justify the belated action by way of filing the instant application by the writ petitioner on the ground that the petitioner is a victim of continuing wrong. It was then submitted that an employee before his retirement is expected to plan his future and to chalk out as to how best he would be able to lead with his retiral benefits. Sudden deduction of any amount from retiral benefit naturally upsets the balance and thereby affects the livelihood of the concerned employee and his family members.

10) Deriving inspiration from the decision of the Apex Court in the case between **Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors., as reported in 2009(1) Supreme 163**, it was submitted by Mr. Sanyal that any recovery of excess payment of emoluments/allowances not paid on account of any misrepresentation or fraud on the part of the employee, or made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous; is not permissible.

11) According to Mr. Sanyal, the issue involved in the present case is not the question of entitlement of the petitioner regarding the amount alleged to have been over paid but it is the

deduction made by the authorities from the petitioner's death-cum-retirement benefit after his retirement and that too, without intimating him. It was then contended that such an act was in flagrant violation of the guarantees enshrined in Articles 14, 20 and 300A of the Constitution. Since retirement benefit is nothing but a property within the meaning of the Article 300A of the Constitution, the respondent authority is not expected to tinker with the same except strictly in accordance with law.

12) It was further contended that there is no scope for initiating any proceeding for recovery of the alleged overdrawn amount at this stage, as the same would clearly be barred by the law of limitation and estoppel.

13) In this context, reference was made to the Full Bench decision of the Gharkhand High Court in the case between **Normi Topno Vs. State of Jharkhand & Ors., as reported in 2008 (6) SLR 397** and the Single Bench decision of this Court in the case between **Kalyan Kumar Chattopadhyay Vs. The State of West Bengal & Ors., as reported in 2006 (WBLR) 1 (Cal) 591.**

14) The deduction thus made was without any authority of law and so, was unauthorized, illegal, arbitrary and unjust. In this context, Mr. Sanyal invited attention of the Court to the two unreported judgments of this Court in W.P. No. 10750(W) of 2007 (Abha Acharyya Vs. State of West Bengal & Ors.) and W.P. No. 9537 (W) of 2007 (Satya Ranjan Das Vs. State of West Bengal & Ors.).

15) In course of submission, Mr. Sanyal contended that the provisions of Rule 140 of the Rules of 1971 do not cover and also do not apply to the facts of the present case. It could not be possible for the petitioner to know that there was any overdrawn amount. Grant of increments and fixation of pay scale were job of the respondent authorities and in the event there had been any mistake in the

calculation, it could not be just and proper on the part of the respondent authorities to shift the responsibility on the writ petitioner.

16) It was submitted on behalf of the petitioner that provisions of Sub-Rule (2) of Rule 140 of the 1971 are to be read with Sub-Rule (1) of Rule 140 of the Rules of 1971 in order to appreciate the scheme and purport of the provision of the said Rules. Provisions of Sub-Rule (1) throws light in reading the meaning of the expression 'Government Dues' and 'overpayment of pay and allowances' used in Sub-Rule (2) of Rule 140 of the Rules of 1971. Mr. Sanyal submitted that a bare look to the classified Government Dues demonstrate a common factor in all types of Government Dues in Sub-Rule (2) i.e. involvement of an overt or positive act on the part of the employee, such overt or positive act is to apply for the said types of benefits which are repayable/payable as per law, as have been classified as Government Dues in Sub-Rule (2) and on his/her representation, such benefits are allowed/granted by the Government which the employee has to repay by instalments or to pay according to the provisions of law like Income Tax Act. Thus, it was contended that the expression 'overpayment of pay and allowances' becomes Government Dues within the meaning of Rule 140(2) of the Rules of 1971 only when such pay and allowance are allowed on his/her representation and such payment has culminated into overpayment due to his/her misrepresentation or fraud. Mr. Sanyal added that the expression 'Government Dues' is a generic term and the types of dues mentioned in Sub-Rule (2) with the expression 'such as' prior thereto are species which must be alike or of that kind.

18) In this context, reference was made to the decision of the Apex Court in the case between **Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise, Baroda, as reported in AIR 1991 SC 754**. Their Lordships in the said case observed :

“The principle of statutory interpretation by which a generic word receives a limited interpretation by reason of its context is well established. In the context with which we are concerned, we can legitimately draw upon the ‘noscitur a sociis’ principle. This expression simply means that ‘the meaning of a word is to be judged by the company it keeps.....”

19) In **State Vs. Hospital Mazdoor Sabha, AIR 1960 SC 610**, the Apex Court observed :

“This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.....”

20) It was also submitted that since alleged mistake in fixation of pay scale was made as far back as on 1<sup>st</sup> July, 1991, its recovery in June, 2002 is barred by law of limitation and the principle of estoppel.

21) As regards delay, Mr. Sanyal submitted that where no right of any third party is involved like that in the present case, if a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.

22) Apart from those already referred to, reliance was also placed on certain unreported Single Bench decisions of this Court by the learned Counsel for the petitioner.

23) On the other hand, Ms. Gutgutia, appearing as learned Counsel for the respondent Nos. 1 to 4, first submitted that it is the essential as well as fundamental duty to safeguard public property. Referring to the backdrop of the present case, she submitted that the writ petitioner was a teacher and must have received increments as well as other service benefits from time to time. There must

have been revisions in pay scale. Each of such increase or revision of pay scale required fixation of pay. As an employee, the petitioner was required to sign the monthly salary register. According to her, it is nothing short of fraud on the part of the petitioner not to detect any wrong fixation of pay and to enjoy the benefit there from. She wondered as to how could the writ petitioner being particularly in the noble profession of teaching could afford to remain quiet when there had been any wrong in the fixation of pay scale. As a beneficiary of an illegality, according to her, the petitioner cannot be granted any equitable relief. Ms. Gutgutia submitted that the plea taken by the writ petitioner is opportunistic and it does not deserve to be entertained by a Court – particularly in its discretionary jurisdiction.

24) In support of such contention, she referred to the decisions in the cases of **Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors., 2009 (1) Supreme 163, Videsh Sanchar Nigasm Limited & Anr. Vs. Ajit Kumar Kar & Ors., 2008 (11) SCC 591 & V. Gangaram Vs. Regional Joint Director & Ors., 1997 (6) SCC 139.**

25) Inviting attention of the Court to Rule 45 in Chapter XI of the West Bengal Recognized Non-Government Educational Institution Employees' (Death-cum-Retirement Benefit) Scheme, 1981, it was submitted that in respect of matters for which provisions have not been made in this scheme, the West Bengal Services (Death-cum-Retirement Benefit) Rule, 1971 (as amended from time to time) are to apply mutatis mutandis subject to the approval of the State Government. Rule 9 and Rule 140 of the DCRB, 1971 provide for deduction of overdrawal amount of the employees. She contended that the excess money or overdrawn amount is Government dues and the State has the rights and powers to get or recover the same from the petitioner. It was also submitted that as per Rules, a retired employee is required to give an undertaking that overdrawal, if any, is to be adjusted from the amount of gratuity found payable by him. Such an undertaking is required to be

signed consciously by such an employee. It was submitted that to think that such an undertaking was made under compulsion, that too, in case of a teacher of a school, would be preposterous. Ms. Gutgutia sought to assail the stand of the writ petitioner on the further ground that in order to prevent undue drainage of public money, the State could always have the right to undue a wrong. There cannot be any waiver against the State so far it relates to public money.

26) Attention of the Court was invited to the fact that the writ petitioner suppressed that he gave such an undertaking and it was an intentional act on his part, if not mischievous as well. On behalf of the State respondent, it was then submitted that the plea of giving undertaking under compulsion was cooked up long after acceptance of the pension payment order and that too, without any demur or protest.

27) Ms. Gutgutia in order to respond to the challenge submitted that it has been expressed that well after years of retirement and receipt of final payment, some retired employees approached this Court by filing writ petition to give such unreasonable claim. Representations are submitted in a calculated and tailored manner soon before filing of such writ applications and this is done in order to find out an answer to the delay. So far the present case is concerned, the purported representation was made more than three years after the date of getting the retiral dues. Ms. Gutgutia categorically submitted that the maxim 'delay defeats equity' is squarely applicable in the present case. In this context, she referred to the Apex Court decision in the case between **Municipal Council Vs. Shah Hyder Beig, 2000 Vol-2 SCC 48.**

28) Learned Counsel for the State respondents sought to derive support and strength from few other decisions and the same are :

**Trilok Chand Vs. H.B. Munshi, AIR 1970 Sc 898, Union of India Vs. S.R. Dhingra & Ors., 2007 (8) Supreme 437, The Secretary to Government Agriculture & Co-operation &**

**Ors. Vs. K. Kesavulu, 2007 (8) Supreme 683 and Regional Manager, A.P. SRTC Vs. N. Satyanarayana & Ors., 2008 (1) SCC 210.**

29) In the present case, the petitioner retired on 28<sup>th</sup> February, 2005. He gave the undertaking on 17<sup>th</sup> February, 2004. He got pension payment order on 15<sup>th</sup> June, 2005 wherein the overdrawn amount, which was deducted by the State was clearly mentioned. It was about three years after that the petitioner submitted a representation addressed to the Director of Treasuries and Accounts and Director of Pension, being respondent Nos. 4 and 6, who again are not the appropriate authorities. No communication was, however, made to respondent No. 3, the DI of Schools and the reasons behind are not far to seek. It was, thus, submitted on behalf of the respondents that the writ application having been filed well after expiry of three years is liable to be dismissed. It was next submitted that as per Rule 16(1)(a) and (b) of the West Bengal (Classification, Control and Appeal) Rules, 1971, the petitioner if at all aggrieved by the calculation of the retiral dues, he/she could make a complaint to the Governor of the State or the appropriate authority of the State as persona designate within a period of 90 days. Petitioner's not approaching the State authority amounted to implied acceptance of the calculation of the retiral dues. It was then contended that Rule 99 of DCRB, 1971 permits the State to deduct excess payment even after retirement (within four years from the retirement) by correcting its mistake.

30) In course of submission, Ms. Gutgutia referred to the other obligations the State in a developing economy and in a changing society is required to discharge. It was contended that the writ Court cannot be unmindful to the changing role of the State in a welfare State and while deciding the legality of any claim, the Court is expected to bear the same in mind. On the one hand, there is irrational and illegal claim of a retired school teacher and on the other hand, the need to reach food to the hungry, clothes to the naked and the shelter to the barefooted millions.

31) In W.P. No. 10624 (W) of 2008, the writ petitioner sought for direction upon the respondent authority for repayment of the alleged overdrawn amount of Rs. 35,935/- to the petitioner along with interest @ 18% per annum from the date of such recovery till the date of actual disbursement and to grant interest @ 18% per annum on the delayed disbursement of pensionary benefits on and from the date of retirement till the date of actual disbursement to the petitioner. The said case also essentially relates to deduction of an allegedly overdrawn amount due to wrong fixation of pay scale.

32) The application, being W.P. No. 10253 (W) of 2008 again relates to the petitioner's prayer for direction upon the respondent authority for repayment of the alleged overdrawn amount of Rs. 39,197/- together with interest thereon. The petitioner in the said case was granted periodically increments, which stood endorsed in the service book and approved by the appropriate authority. His scale of pay was revised and fixed in the appropriate scale under the respective Revision of Pay & Allowance Rules on the basis of the option exercised by him and approved by the competent authority. Pension payment order was issued on 6<sup>th</sup> of April, 2000, which was long after his retirement. From it, he could learn that an amount of Rs. 39,197/- had been shown as overdrawn in pay and the same was deducted from his gratuity amount. The petitioner was allowed extension for five years after his retirement. He was allowed to draw his salary for the period during which he was in such extended service. Challenging such unilateral and arbitrary action by way of deduction of the said amount, the petitioner approached this Court with the said application.

33) Mr. Saibal Acharya, appearing as learned Counsel for the petitioner in W.P. No.17692 (W) of 2008, submitted that since no third party's interest is involved and the petitioner does not seek any interest, the delay in approaching the Court deserves to be condoned. Alleging illegality in

deducting an amount of Rs. 18,354/- from the pension/gratuity of the writ petitioner on the ground of alleged overdrawal, the petitioner approached the Court with the said application.

34) Mr. Sourav Mitra on behalf of the writ petitioner in W.P. No. 10625 (W) of 2008 also challenged the action on the part of the respondent authority by way of deducting an amount of Rs. 1,34,728/-. The writ petitioner in the said case retired on 29<sup>th</sup> February, 1992. He, however, was allowed extension even after such retirement and during the said period he was allowed to draw his salary etc. Long after eight years of his superannuation on 25<sup>th</sup> October, 2000, he found the aforesaid amount of Rs.1,34,728/- had been deducted from his gratuity on account of salary drawn during extended service. Mr. Mitra submitted that the authorities had no right to deduct the said amount after cessation of relationship between the petitioner and the Government as master and servant.

35) The petitioner in W.P. No. 10626 (W) of 2008 knocked the door of this Court with virtually identical grievance. After his superannuation on 31<sup>st</sup> January, 1994, he was allowed extension. He drew his salary for the period when he was in such extended service. Long 10 years after his superannuation on 21<sup>st</sup> March, 2003, he found that an amount of Rs. 78,423/- had been deducted from gratuity on account of salary drawn during such extended service. Petitioner was allowed extension by the appropriate authority and his drawing of salary during the said period could not be an overdrawal due to any wrong fixation of pay.

36) The petitioner in W.P. No. 10628 (W) of 2008 retired from service on 31<sup>st</sup> October, 2000. The pension payment order was issued on 29<sup>th</sup> August, 2003. He could gather therefrom that an amount of Rs. 63,877/- had been shown as overdrawn amount. Without giving any opportunity of hearing, the said amount was deducted by the respondent authority. Mr. Sourav Mitra, as learned Counsel for the petitioner in the said case, contended that sanction and approval of re-fixation and

incremental grant made decades ago cannot be allowed to be scrutinized and re-opened for recovery and the clock cannot be set right anticlockwise after decades to the prejudice of a retired incumbent. Mr. Sourav Mitra submitted that the petitioner cannot also be denied the penal interest for the inordinate delay of three years towards disbursement of pensionary benefits in favour of the writ petitioner.

37) Nature of the controversy raised in the above writ applications being similar and since they all approached the Writ Court seeking, more or less, identical reliefs – all those cases were taken up for hearing at a time on consent of learned Lawyers for the parties and in response to this submission.

38) The crux of the controversy is how far the respondent authorities are justified in taking such belated action in an attempt to undo any earlier wrong. This significant aspect also requires to be dealt with in the larger context of the fact that the parties are engaged in an unequal, if not unjust, legal battle. On the one side, there are retired employees and on the other, the State functionaries. Before proceeding further, it may be mentioned that it had never been claimed on behalf of the respondent authorities that any action has so far been initiated or even contemplated against the authority or officer, who are the architects of the controversies.

39) It is well settled that grant of pensionary benefits is no charity. But how can one dispute that getting of pension in most cases becomes a matter of hard struggle on the part of a retired employee. He has to move from post to pillar and pillar to post in order to get such pension. Unless there is conscious fault on the part of an employee or any act of fraud or misrepresentation on his part, such employee does not certainly deserve to be struck with such a severe blow, affecting his right to live with dignity and that too, at this belated stage.

40) How could the petitioner in W.P. No. 10885(W) of 2008 be held responsible for any wrong fixation of pay as far back as on 1<sup>st</sup> January, 1991 ? How this could escape the notice of the concerned authorities even at subsequent stages when there had been revisions of pay and allowances ?

41) Ordinarily, fixation of pay-scale is not done by the concerned individual employee and it is the responsibility of the authority, which presumably have the expertise in this matter.

42) The aforesaid discussion leaves little scope for any confusion or controversy regarding the following aspects :

- i. There had been deduction of some amount of money from the pensionary benefits of the writ petitioners.
- ii. Such deduction was made on the ground of alleged overdrawal.
- iii. Respondent authorities never even claimed that the petitioners were given any opportunity to explain or show cause before making such deduction and thus, opportunity of hearing was denied.
- iv. By no stretch of imagination, it could be said that there had been any fraud or misrepresentation on the part of the petitioner.
- v. Assuming that the petitioners enjoyed the benefits of wrong fixation of pay scale or the like and they chose to remain silent spectators, how far it can be said that the petitioners had any direct role to play?
- vi. Belated steps were taken by the respondents by way of making deduction on the pretext of undoing a wrong committed years back.

43) Considering all such facts and circumstances, I do not think it just and proper to brush aside the allegations made in the various writ applications under reference and in the considered opinion of

this Court, it was not on the part of the State authorities for deducting various amounts of money on the ground of alleged overdrawal and that too, in the backdrop of the specific facts and circumstances.

44) Accordingly, the writ applications being W.P. No. 10885 (W) of 2008, W.P. No. 10624 (W) of 2008, W.P. No. 10253 (W) of 2008, W.P. No. 17692 (W) of 2008, W.P. No. 10625 (W) of 2008, W.P. No. 10626 (W) of 2008 and W.P. No. 10628 (W) of 2008 be allowed.

45) The respondent authorities are directed to pay the deducted amount to the respective writ petitioners together with interest @ 10% per annum and such interest be limited to a period of not exceeding three years. Such payments must be made by the respondent authorities in favour of the respective writ petitioners within four months from the date of communication of the order.

46) There is no order as to costs.

47) Xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.

**(S.P. Talukdar, J.)**