

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. –OA-578 of 2022

LILY MONDAL -- VERSUS – The State of West Bengal & Others.

Serial No.	For the Applicant	:	Mr. Gautam Pathak Banerjee,
and			Learned Advocate
Date of			
order	For the State Respondents	:	None
	For the Principal Accountant	:	Mr. Biswanath Mitra,
	General (A&E), West Bengal	:	Departmental Representative
<u>10</u>			
19.06.2025			

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No.638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

In this application, the applicant has prayed for a direction to the respondent authorities to refund the amount recovered from her gratuity amounting to Rs. 1,19,208/- (Rupees one lakh nineteen thousand two hundred and eight) only along with an interest @ 12% per annum.

The applicant was appointed on 29.09.1980 and had joined in service on 30.09.1980 as a Health Worker (F) and superannuated on 30.11.2020 as a Health Supervisor (F) in the office of the Block Medical Officer of Health of Chakmandala BPHC, Barapahari, Birbhum. The applicant had appeared before this Tribunal by way of filing another original application, being O.A. 978 of 2013, praying for refund of Rs.1,36,264/- wherein by its order dated 09.01.2013, the Tribunal directed refund of the amount. Her pension papers were returned by the Office of the Principal Accountant General (A&E), West Bengal pointing out that there was an overdrawn amount by the applicant out of her erroneous fixation of pay. The Office of the Principal Accountant General (A&E) advised the pension sanctioning authority to re-submit the pension proposal after rectifying the fixation of pay and recovering the excess payment from her gratuity. In accordance with such advice, the respondent authorities calculated Rs. 1,19,208/- as the overdrawn amount and the pension proposal was re-submitted. The Pension Payment Order (PPO) issued on 19.04.2021 had recorded the overdrawn amount with a direction to recover the same from the applicant's gratuity.

Neither the fact of the erroneous fixation of pay nor its cancellation was ever assailed and disputed by the applicant. It is only when the recovery of the overdrawn amount was recorded in PPO, the applicant found it reasonable to challenge the same before this

ORDER SHEET

Form No.

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THE STATE OF WEST BENGAL & ORS.

Tribunal. Taking support from the judgement reported in (2015) 4 SCC 334 : *State of Punjab and others-Vs.-Rafiq Masih*, the applicant argues that such recovery is a non est in the eyes of law and thus, not permissible. Paragraph 18 of the said judgement lays down that under the following situations, recoveries by the employees would be impermissible in law :

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

The judgement cited above arrives at the conclusion, that recovery, if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

The Tribunal finds, in this case, the applicant superannuated on 30.11.2020. The records do not show from which date the erroneous fixation of pay occurred. The payment was made for a long duration of time for which the employee is not responsible. The impact being more unfair and improper, the decision of recovering the amount from the gratuity of the applicant is iniquitous, harsh and arbitrary. As the error was due to mistake of the employer, such recovery is impermissible and non est in the eyes of law.

In view of the above observations, the Tribunal directs the respondent No.2, the Director of Health Services, Kolkata to issue necessary order for refund of the recovery amount within a reasonable period of time in terms of the judgement passed in *Rafiq Masih (supra)* and as per Rules.

The application is disposed of.

SCN.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)