

ORDER SHEET

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 619 OF 2019

GOPINATH BANERJEE & ORS. - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicants	:	Mr. P.K. Mondal, Mr. S. Chatterjee, Advocates
	For the State Respondent Nos. 2 and 4	:	Mr. G.P. Banerjee, Advocate
<u>20</u> 10.01.2025	For the Respondent Nos. 1 and 3	:	Mrs. Anjana Bhattacharjee, Mr. Raja Bag, Departmental representatives.

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.

The prayer in this application is for setting aside the impugned order of the District Magistrate dated 23.12.2016. The impugned order in effect re-fixed the wage of the applicants at Rs.6,600/- per month without any allowances as per G.O. No. 2966-F (P) dated 22.04.2010, G.O. No.11794-F (P) dated 22.12.2010 and G.O. No. 9008-F (P) dated 16.09.2011. Earlier they were getting a wage of Rs.8,500.00 per month as per G.O. No. 4011-F (P) dated 20.05.2013. In the impugned order the District Magistrate and Collector, Birbhum states that as casual workers each one of them has overdrawn an amount of Rs. 2,54,244/- in excess of their entitlement from the period from 01.05.2010 to 29.02.2016. So, the overdrawn amount by this order is to be recovered in 24 equal instalments from the wages payable to these applicants.

Submission of Mr. Mondal was that by G.O. No. 3727-F dated 20.05.2009 the wages of the applicant as casual worker was fixed in the Pay Band of Rs.4900 – 16,200/- (PB-1).

Submission was that without a notice and without giving any opportunity of hearing and without cancelling the earlier G.O. No. 3727-F dated 20.05.2009, the respondent No.4, the District Magistrate & Collector, Birbhum passed the impugned order dated 23.12.2016 directing them to deduct and recover the excess amount from each of the applicant. Such direction was not only arbitrary, but also violative of Article 14 of the

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Constitution.

Moreover, it was submitted that in another similar application, being O.A. 280 of 2017 : Biswanath Singh & 3 Ors. versus The State of West Bengal & Ors., the Tribunal had passed an order on 21st December, 2017 by directing the respondent No.4, the District Magistrate & Collector, Birbhum that the recovered amount so deducted be refunded to them. So, in view of the above, the learned counsel for the applicants had submitted that similar order may be given to the respondents to comply. Despite furnishing several representations praying for cancellation of the order directing the overdrawn amount, the respondent failed to respond and consider the representations.

Mr. Mondal had relied on the following judgement in support of the prayers of the applicants in this application:

Civil Appeal No. 11527 of 2014: State of Punjab and Others etc. versus Rafiq Masih (White Washer) etc., Sujan Kumar Ghosh versus The State of West Bengal & Ors., Thomas Daniel versus State of Kerala & Ors., and Jyotsna Rani Das versus The State of West Bengal & Ors.

Mr. Gautam Pathak Banerjee, appearing for the respondent No.2 and 4 had responded that the order of recovery was based on a notification of the Finance Department which was issued during the year 2010 and 2011. Therefore, the G.O. No. 3727-F dated 20.05.2009 is not relevant in this case.

Referring to a notification passed by the Finance Department in 1964, Mr. Banerjee also submitted that the decision of the respondent was correct and to rectify such mistake, this decision was taken to deduct the said excess amount. Regarding the Tribunal's order in O.A. 280 of 2017, submission is that applicants in this application are not similarly circumstanced since the applicants in that O.A. were regular Group 'D' employees, whereas the applicants in this application are casual / daily rated / contractual employees. Therefore, the law cannot be the same for those regular employees and for casual or contractual employees. Further submission was that the application has not stated any ground for being aggrieved with the decision of the respondent. Finally, this application, filed in the year 2019 challenging the impugned order passed in the year 2016, is not admissible due to limitation.

Ms. Ruma Sarkar, the Departmental Representative had submitted that in another application, O.A. 921 of 2016, pending before this Tribunal, the same set of applicants

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have prayed for absorption in Group 'D' on regular basis. Therefore, the prayer in this application cannot be adjudicated without hearing the other application for absorption.

Ms. Sarkar submitted that as per third paragraph of memo No 9008-F (P) dated 16.09.2011, all other earlier orders have been superseded. Therefore, the service conditions and other emoluments and all other details of the casual/daily rated / contractual employees will be determined as guided by the said memo.

Mr. Mondal, learned counsel responded to the earlier submissions of Mr. Banerjee and Ms. Sarkar in the following way:

1. As evident from the order of the Tribunal in O.A. 280 of 2017, dated 21.12.2017, the applicants in the earlier matter, were also not the regular employees at the point of time.
2. Mr. Mondal had also drawn attention to the statements made by the Tribunal in the same earlier application in which the Tribunal had observed that :

“but the principle enunciated in the Rafiq Masih Case, in our opinion, ought to apply to them as well particularly because they were in far more precarious financial condition at that point of time compared to a regular Group 'D' employee. Therefore, from the stand point of equity and justice, even if there had been any overdrawal amount, it would not be fair and proper on the part of the authorities to go in for its recovery after lapse of such a long period of time.”

3. Responding to Ms. Sarkar's statements on the last date of hearing, he further submitted that though notification No.9008-F (P) dated 16.09.2011 had superseded all previous notifications, but despite such notification having been superseded all previous notifications, the respondent authorities continued to pay their monthly salary at the previous rate. Despite existence of such notification, the applicants continued to receive the higher remuneration till 2016. In response to what Mr. Mondal had submitted, Ms. Sarkar pointed out that the present applicants are basically fence sitters, who have also prayed for certain reliefs as given to the applicants in O.A. 280 of 2017. The applicants in the earlier application were subsequently absorbed into regular establishment but the present applicants continued to be contractual daily rated workers. Therefore, referring to any order passed by

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the Tribunal earlier is not relevant in this matter.

Ms. Sarkar had admitted that though the applicants were not entitled to receive such remuneration in terms of notification 3727-F dated 20.05.2009, but were given erroneously till 2016. Ms. Sarkar pointed out that in this case the judgement of Rafiq Masih's case is not applicable for the reasons that the applicants were casual / daily rated / contractual workers and not regular employees. The judgement of Rafiq Masih's case is applicable only for regular employees.

From the submissions of the learned counsels and the records presented, it is clear that the respondent authority had erroneously paid a higher wage to these applicants. Upon detection of such wrong payment, an order was passed for recovery of excess payment in instalments. The applicants have tacitly acknowledged such over payment and have not contested the remuneration as re-fixed later. Their main argument is the arbitrariness in such deduction. This Tribunal after proper examination of their arguments is not satisfied that such recovery is violative of the Judgments in Rafiq Masih's case. The reliance on an order of this Tribunal in O.A. 280 of 2017 is also not convincing for the reason that in the earlier case, the "precarious financial condition" was the main ground in favour of the applicants. Here, no such picture has been given. Therefore, the Tribunal cannot hold the decision of the District Magistrate as incorrect because he is authorised by rules to recover excess amount if paid to employees by mistake. The applicants cannot ask for perpetuation of such mistake, which has been admitted by their employer. It is also necessary to appreciate that such recovery has been planned in monthly instalments, so as not to put severe burden on the applicants. Therefore, this Tribunal, with the above observation, has come to this conclusion that such order of recovery was not incorrect and was within the legal framework. Thus, the prayers in the application, being devoid of any merit, is disposed of without any orders.

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

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