

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

**Hon'ble Justice Soumitra Pal, Hon'ble Chairman.**  
**& Hon'ble Dr. Subesh Kumar Das, Administrative Member.**

CASE No. OA 11 of 2017.

CHARAN SAREN -Vs- THE STATE OF W.B. & ORS.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>8 22.1.2019.</p>	<p>For the Applicant : Mrs. S. Mitra, Advocate.</p> <p>For the State Respondent : Mr. S. Ghosh, Advocate.</p> <p>For the Principal Accountant General (A &amp; E) W.B. : Mr. B. Mitra, Departmental Representative.</p> <p>Though the matter has appeared under the heading "Reply/Rejoinder and Objection", with the consent of Mrs. S. Mitra, learned advocate for the applicant, Mr. S. Ghosh, learned advocate for the State respondent and Mr. B. Mitra, Departmental representative of the Principal Accountant General (A &amp; E) W.B., the matter is taken up for hearing.</p> <p>At the very outset it is submitted by Mrs. Mitra that as his client has already received arrears of pension, she is giving up prayer "a". With regard to prayer "b", it is submitted that in view of the judgement of the Supreme Court in State of Punjab –Vs- Rafiq Masih: AIR 2015 SC 696, the deduction of Rs. 15167/- from the retiring gratuity is not permissible. Hence, appropriate order may be passed.</p>	

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	<p>Mr. Ghosh, learned advocate for the State respondent and Mr. Mitra, the departmental representative of the Principal Accountant General (A &amp; E) West Bengal submit that a sum of Rs. 35,584/- was granted as service Gratuity to the applicant who had superannuated on 28<sup>th</sup> February, 2005. However, pursuant to the judgement passed by the High Court in WPST No. 335 of 2010 pension has been released. Accordingly the applicant has been given retiring gratuity of Rs. 20,417/-. Now a person getting pension is not entitled to service gratuity. Hence the amount of Rs. 15167/- had to be recovered that is Rs. 35584/- minus Rs. 20417/- and therefore there is no illegality in recovery. Submission is the judgement passed in Rafiq Masih (supra) is not applicable as therein the deductions were made due to wrong calculation of salary and wages.</p> <p>Heard learned advocate for both the parties.</p> <p>It appears after superannuation service gratuity Rs. 35,584/- was granted to the applicant. Thereafter pursuant to the judgement and order passed in WPST 335 of 2010, direction was issued to grant pension. Pension was granted. Consequently retiring</p>	

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Skg,	<p>gratuity was released. Since a person entitled to pension is eligible for retiring gratuity and not entitled to service gratuity, the amount of Rs. 15167/- had to be recovered which was directed as evident from page 64 of the application. The judgement in Rafiq Masih (supra) is not applicable as therein deductions were made due to wrong calculation of salary and wages and in the instant case the deduction was not on that account as evident from the discussion in this paragraph. Hence there is no illegality in the deduction of Rs. 15,167/-. Therefore, no order is passed on the application. The application is disposed of.</p> <p>(Subesh Kumar Das) Member(A).</p> <p>(Soumitra Pal) Chairman.</p>	

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