

ORDER SHEET

West Bengal Administrative Tribunal

Present.-

The Hon'ble Justice Ranjit Kumar Bag

&

The Hon'ble Dr. Subesh Kumar Das

Case No. **OA 1326 of 2012**

Bimal Chandra Mondal

Versus

The State of West Bengal & Ors.

Serial No. and
date of order

Order of the Tribunal
with signature

Office action with date
and dated signature of
parties when necessary.

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28/11/2019

For the Applicant : Mr. M. Karim,
Mr. A. Samad,
Ld. Advocates.

For the State Respondent : Mrs. M. Mallick,
Ld. Advocate.

The applicant has prayed for direction upon the respondents for refund of an amount of ₹ 6,06,748/- which was recovered from the retiring Gratuity and relief on pension of the applicant on the ground of excess payment due to wrong fixation of pay.

The applicant joined in the government service as Employment Officer on March 02, 1987 and retired from service as Joint Director of Employment on December 31, 2010. It appears from the letter dated September 26, 2012 and letter dated March 14, 2013 issued by the Director of Employment, West Bengal and Joint Director (Audit & Accounts) Directorate of Employment, West Bengal respectively that the applicant had withdrawn a sum of ₹ 6,06,748/- by receiving inadmissible increments during the period from March 01, 1990 to April 23, 2009 and as such the said amount of money was recovered from the retiring Gratuity of the applicant and from Dearness Relief on pension.

The question for consideration of the Tribunal is whether deduction of an amount of ₹ 6,06,748/- from

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	<p>the retiring Gratuity and other retirement benefits of the applicant due to excess payment during the period of service was justified under the Law.</p> <p>Having heard Learned Counsel representing both parties and by following the Judgment of Hon'ble Supreme Court in the case of "State of Punjab v Rafiq Masih" reported in (2015) 4SCC 334, we have to decide whether the applicant is entitled to get refund of ₹ 6,06,748/- which was deducted from his retiring Gratuity and other retirement benefits long after retirement. The Hon'ble Supreme Court has summarised the following situations in paragraph 18 of the judgment of "State of Punjab v Rafiq Masih" (Supra), when recovery of excess payment by the state respondents would not be permissible in law:</p> <p><i>".... (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service);</i></p> <p><i>(ii) Recovery from the retired employees, or the employees who are due to retire within one year of the order of recovery;</i></p> <p><i>(iii) Recovery from the employees, when the excess payment has been made for a period in excess of 5 years,</i></p>	

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	<p><i>before the order of recovery is issued;</i></p> <p><i>(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;</i></p> <p><i>(v) In any other case, where the Court 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."</i></p> <p>We have laid down in the case of "Bireswar Dey v State of West Bengal & Ors." (OA-1045 of 2014 decided on August 20, 2018), that state respondents cannot invoke the provisions of Rule 140(2) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 for recovery of excess payment of pay and allowances from the retiring Gratuity of the Government employee, particularly when the recovery of over payment from retiring gratuity is done after prolonged period from the date on which the said recovery would have been effected and thereby causing hardship to the applicant to such an extent, which will outweigh equitable balance of the right of the Government to recover the same.</p> <p>By following the decision of the Hon'ble Supreme</p>	

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	<p>Court in the case of “State of Punjab v Rafiq Masih” (Supra) and the decision of the Tribunal in “Bireswar Dey v State of West Bengal & Ors.” (Supra), we are of the view that the state respondents are bound to refund an amount of ₹ 6,06,748/- which was deducted from the retiring Gratuity and other retirement benefits of the applicant long after his retirement from service.</p> <p>In view of our above findings, the respondent no. 2, Director of Employment, West Bengal is directed to refund a sum of ₹ 6,06,748/- to the applicant within a period of 12 (twelve) weeks from the date of communication of the order. With the above direction, the original application stands disposed of.</p> <p>Let a Plain Copy of the order be supplied to both parties.</p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	

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