

**ORDER SHEET**  
**West Bengal Administrative Tribunal**

Present.-  
The Hon'ble Justice Ranjit Kumar Bag  
&  
The Hon'ble Dr. Subesh Kumar Das

**Case No. OA 141 of 2016**

Lakshmi Kanta Sarkar

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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18/07/2019

**For the Applicants** : Mr. S. Dutta,  
Ld. Advocate.

**For the State Respondent** : Mr. A.L. Basu,  
Ld. Advocate.

**For the A.G., W.B.** : Mr. B. Mitra,  
Depttl. Representative.

The applicant has prayed for direction upon the respondents for refund of ₹ 47, 007/- which was deducted from the retiring gratuity as excess payment of salary.

The applicant retired from service on January 31, 2007 from the establishment of the respondent no. 4, the Revenue Officer, Damodar Irrigation Revenue Division No. II, Durgapur, District Burdwan. It appears from the gratuity payment order dated August 22, 2007 that the applicant was entitled to receive ₹ 1,50,626/- as retiring gratuity. It further appears from the said gratuity payment order that an amount of ₹ 47,007/- was deducted from the amount of gratuity on the ground of excess payment due to wrong fixation of pay. It also appears from the reply submitted by the state respondents that the applicant received the balance amount of gratuity i.e. ₹ 1,03,619/-.

Having heard Learned Counsel representing both

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	<p>parties and on consideration of the materials on record, we find that there was excess payment of ₹ 47,007/- to the applicant due to wrong fixation of pay. However, this wrong fixation of pay was detected long back but order for recovery of excess payment from retiring gratuity was made after retirement of the applicant from service. The Hon'ble Supreme Court summarised the following situations in paragraph 18 of the judgment of 'State of Punjab v Rafiq Masih' reported in (2015) 4 SCC 334, 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, 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</i></p>	

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	<p><i>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 &amp; 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 Court in the case of 'State of Punjab v Rafiq Masih (Supra)' and the decision of 'Bireswar Dey v State of</p>	

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Csm	<p>West Bengal &amp; Ors. (Supra)', we are of the view that the state respondents are bound to refund an amount of ₹ 47,007/- to the applicant. In view of our above findings, the respondent no. 4, the Revenue Officer, Damodar Irrigation Revenue Division No. II, Durgapur, District Burdwan is directed to refund ₹ 47,007/- to the applicant within a period of 08 (eight) weeks from the date of communication of the order.</p> <p>With the above direction, the original application stands <b>disposed of</b>.</p> <p>Let a <b>Plain Copy</b> of the order be supplied to both parties.</p> <p><b>S. K. DAS</b> <b>MEMBER(A)</b></p> <p><b>R. K. BAG</b> <b>MEMBER(J)</b></p>	