

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

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das**

Case No –OA 779 OF 2015

Tagar Roy Vs The State of West Bengal & 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>9</p> <hr/> <p>03.10.2018</p>	<p>For the Applicant : Mr. S.N. Ray, Learned Advocate.</p> <p>For the State Respondents : Mrs. S. Agarwal, Learned Advocate.</p> <p>The original applicant Tagar Roy has prayed for direction upon the respondents to refund Rs.3,95,817/- which was deducted from the retiring Gratuity of the applicant on the ground of excess payment due to wrong fixation of pay.</p> <p>The original applicant Tagar Roy retired on December 31, 2014 from the post of Sister Grade I (II) of Murshidabad Medical College and Hospital. It appears from order dated April 6, 2015 issued by the Respondent No. 4 that an amount of Rs.3,95,817/- needs to be deducted from the amount of Gratuity on the ground of excess payment of salary due to wrong fixation of pay. It is the contention of the applicant that the applicant received the balance amount of gratuity in due course.</p> <p>Having heard Learned Counsel representing the applicant and Learned Counsel for the State respondents, we find that there was excess payment of Rs.3,95,817/- to the applicant due to wrong fixation of pay. However, this wrong fixation of pay was detected and order of recovery of excess</p>	

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	<p>payment from retiring gratuity was made after retirement of the applicant from service. The Hon'ble Supreme Court has 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 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</i></p>	

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	<p><i>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 Court in the case of "State of Punjab v Rafiq Masih" (Supra) and the decision of "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 Rs.3,95,817/- to the applicant .</p> <p>The original applicant Tagar Roy died during pendency of the present application and her legal heirs have been substituted as applicant no. 1 and applicant no. 2.</p> <p>In view of our above findings, the respondent no. 4, the Medical Superintendent-cum-Vice Principal, Murshidabad</p>	

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