

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 700 091**

Present :-

*Hon'ble Justice Ranjit Kumar Bag,
Judicial Member.*

-AND-

*Hon'ble Dr. Subesh Kumar Das,
Administrative Member.*

J U D G M E N T

-of-

Case No. : O.A. 947 of 2014 :
NIMAI CHAND MONDAL – V. STATE OF WEST BENGAL & ORS.

For the Applicant :-

**Mr. G.P. Banerjee,
Mr. B.P. Roy,
Learned Advocates.**

For the State Respondents :-

**Mr. S. Bhattacharyya,
Departmental Representative.**

For A.G. (A & E), W.B. :

**Mr. B. Mitra,
Departmental Representative.**

Judgment delivered on : September 24, 2019

JUDGEMENT

The applicant has prayed for direction upon the respondents for refund of Rs.58,547/- along with interest @18% p.a. during the period from date of retirement till the date of actual payment, as the said amount of money was deducted from the retiring gratuity of the applicant on the ground of excess payment of salary due to wrong fixation of pay.

2. The applicant retired as Revenue Officer from the establishment of the Sub-Divisional Land and Land Reforms Officer (in short, SDL & LRO), Tamluk on July 31, 2012. The respondent No. 3, SDL & LRO, Tamluk detected excess payment of Rs.58,547/- to the applicant on August 22, 2012 at the time of issuing order for pension and gratuity of the applicant. By virtue of order dated December 7, 2012 issued by the Assistant Accountant General of the office of the Principal Accountant General (A & E), West Bengal, a sum of Rs.58,547/- was deducted from the retiring gratuity of the applicant without any fault on the part of the applicant.

3. With the above factual matrix, Mr. G.P. Banerjee, Learned Counsel for the applicant contends that there was no fraud or misrepresentation on the part of the applicant in fixation of pay in terms of West Bengal Services (Revision of Pay and Allowances) Rules, 1998 (in short, ROPA, 1998). The excess payment of Rs.58,547/- was made due to wrong fixation of pay while the applicant was in service, but the said excess payment was detected after retirement of the applicant from service. Relying on the judgment of the Hon'ble Supreme Court in "State of Punjab v. Rafiq Masih" reported in (2015) 4 SCC 334, Mr. Banerjee submits that recovery of excess payment from the retiring gratuity of the applicant is not permissible in law and as such the said amount should be refunded to the applicant along with interest @18% p.a. during the period from the date of retirement till the date of actual payment. Per contra, Mr. S. Bhattacharyya, the Departmental Representative of the State respondents submits that the principles enunciated by the Hon'ble Supreme Court in the case of "State of Punjab v. Rafiq Mashi" (supra) will not be applicable in the facts of the present case, as the applicant furnished an undertaking of making refund of excess

payment while he opted for revised pay scale in terms of the provisions of ROPA, 1998. Mr. Bhattacharyya has relied on the decision of the Hon'ble Supreme Court in "High Court of Punjab and Haryana v. Jagdev Singh" reported in (2016) 14 SCC 267 in support of his above contention. He has also placed on record a photocopy of the form of option exercised by the applicant on November 2, 1998, whereby the applicant gave an undertaking to refund excess payment, if fixation is found to be erroneous in the revised scale of pay in terms of ROPA, 1998.

4. There is no dispute that the applicant retired from service on July 31, 2012 from the establishment of the respondent No. 3. It is also not disputed that on August 22, 2012 the respondent No. 3 detected excess payment of Rs.58,547/- to the applicant due to wrong fixation of pay in the revised scale of pay in terms of the ROPA, 1998 on the basis of option exercised by the applicant on November 2, 1998. Admittedly, the recovery of excess payment has been made after the retirement of the applicant from service, which is not permissible in law as laid down by the Hon'ble Supreme Court in "State of Punjab v. Rafiq Masih" (supra). However, in "High Court of Punjab and Haryana v. Jagdev Singh" (supra), the Hon'ble Supreme Court has categorically pointed out that the principle enunciated in paragraph 18 (ii) of the judgment of "State of Punjab v. Rafiq Masih" (supra) cannot apply to a situation where the Government employee to whom the excess payment was made was clearly placed on notice that any payment found to have been made in excess would be required to be refunded on the basis of undertaking given by him while opting for revised pay scale. It is relevant to quote paragraphs 10, 11 and 12 of the judgment of "High Court of Punjab and Haryana v. Jagdev Singh" (supra), which are as follows :

"10. In State of Punjab v. Rafiq Masih this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law : (SCC pp. 334-35)

- (i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

- (iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (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.*
- (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. (emphasis supplied)*

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years."

5. By following the above decision of the Hon'ble Supreme Court, we find that the excess payment of Rs.58,547/- was made in the first instance by clearly placing the applicant on notice that any payment found to have been made in excess at the time of fixation of pay in terms of ROPA, 1998 need to be refunded on the basis of undertaking furnished by the applicant while opting for revised scale of pay in terms of ROPA, 1998. The applicant is, thus, not entitled to refund of Rs.58,547/-, which was deducted from his retiring gratuity as excess payment of salary on the basis of undertaking given by him while exercising option for getting revised scale of pay in terms of ROPA, 1998.

6. As a result, the original application is dismissed.
7. Let urgent Xerox certified copy of the judgment be supplied to the parties, if applied for, on priority basis after compliance of all necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER(A)

(Ranjit Kumar Bag)
MEMBER (J)