

10.03.2021.
Item no. 23.
Court No.13
ap

**W.P.A. No. 21446 of 2019
(Through Video Conference)**

**Ujjal Kumar Chakraborty
Versus
The State of West Bengal & Ors.**

Mr. Manas Kumar Ghosh,
Ms. Susmita Dey (Basu),
Mr. Arabinda Maji.

...For the petitioner.

Mrs. Sonal Sinha,
Ms. Sarda Saha.

...For the WBMICL.

The writ petitioner is aggrieved by an order dated 25th July, 2019 effecting recovery of a sum of Rs.1,03,288/- from his terminal benefits. The petitioner superannuated from service on 31st December, 2017. He was allowed an increment under the Modified Career Advancement Scheme of the State despite having received two increments under the previous Career Advancement Scheme. Admittedly, those employees, who get the benefit of two increments under the CAS are not entitled to any benefit under the MCAS.

Two years after the petitioner's retirement by the impugned order, the Managing Director of WBMIC Limited ordered recovery of a sum of Rs.1,03,288/- re-fixing the petitioner's last drawn after pay deducting the illegal MACS increment granted to the petitioner.

In the grounds set out to this writ application, the petitioner has challenged the recovery on the ground of hardship and the delay in making the same.

Across the bar, Counsel for the petitioner has submitted that the petitioner was not heard before passing of the order dated 25th July, 2019.

Counsel for the Corporation has filed a report by way of affidavit bringing on record a Circular dated 14th July, 2010 issued by the Managing Director of the employer which recorded that the claims under the MCAS was being released immediately as per application submitted by the employee.

It was, however, stipulated that the entitlement was the subject matter of decision before the State and payment, if any, was subject to recovery forthwith.

It is argued by the Counsel for the WBMICL that the Corporation 'forthwith' would essentially mean from the date on which the Corporation and the State came to know of the dis-entitlement of the petitioner and had nothing to do with the date on which the benefit is granted.

This Court notes that the petitioner has enjoyed the benefit for a substantially long period from 2010 to 2017 until his retirement. The recovery sought to be made was only from his terminal benefits. The illegal benefit of such increment enjoyed by the petitioner for seven long years has not been recovered.

In view of the order dated 14th July, 2010 issued by the Managing Director any additional payment under the MCAS to any employee must be deemed as provisional and subject to recovery if found not entitled to.

There is no whisper in this writ application that the writ petitioner was in fact entitled to the third benefit under the MCAS. The only ground urged is a point of hardship.

Since the entitlement of the third of the benefits under MCAS remains unchallenged, the question of any hearing to the petitioner prior to passing of the impugned order does not arise.

This Court is unable to accept the contentions of the petitioner that there can be any hardship for recovery being effected even two years after retirement in view of the communication dated 14th July, 2010. The petitioner has already enjoyed the illegal benefits for seven long years during his service.

The decision of ***State of Punjab v. Rafiq Masih*** reported in **2015(4) SCC 334** relied upon by the Counsel for the petitioner, in my view has no manner of application in the facts of the present case.

However, since admittedly the retirement benefits of the petitioner have been paid about two years after retirement. The petitioner shall be entitled to interest at the rate of 8% per annum on the

terminal dues payable to him from the date of superannuation till the date of actual payment.

Let such payment towards interest be made by the Corporation within a period of four months from the date of communication of a copy of this order.

The writ petition is, therefore, only allowed in part.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)