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16.12.2022
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 18837 of 2019

**Tapan Kumar Chatterjee
-versus
The State of West Bengal & Ors.**

**Mr. Swapan Kumar Nandi,
Mr. Debjyoti Ghosh.
...For the Petitioner.**

**Mr. S.P. Lahiri.
...For the State.**

**Mr. Keshab Chandra Das,
Ms. Aparajita Mondal.
...For the Respondent
Nos.4 and 5.**

Affidavit-in-reply filed in Court today is taken on record.

The petitioner was serving as the Rent Collector of the Tarakeshwar Municipality. His scale of pay was Rs.220...388/-. The same was revised to Rs.2600...4175/-.

The Municipality entered into a bipartite agreement with the recognized union of the Municipality and revised the aforesaid scale of pay from Rs.2600...4175/- to Rs.3350...6325/- that is the scale prescribed for the post of Rent Collector in the Government.

The aforesaid scale was effective from the date of the order. The order of revision of scale of pay was subject to the approval of the State Government.

On the basis of the aforesaid order of the Chairman of the Municipality dated 28th August, 2004, the petitioner received the enhanced scale of pay.

By a communication dated 1st November, 2017, the Chairman of the Municipality intimated the concerned employees that the Rent Collectors enjoying pay scale of Rs.3350-6325/- (erstwhile Rs.300...685/-) vide office order dated 28th August, 2004 with effect from 1st August, 2004 is fixed at Rs.800...1265/- (erstwhile 220...388/-), in view of the order of the Director of Local Bodies vide No. 663 DLB/Verification-1/2002 (pt-I) dated 27th May, 2013.

The petitioner was intimated that as per resolution of the meeting of the Board of Councillors held on 31st October, 2017, it was ordered that the excess drawal will be recovered by deducting from salary of November 2017 onwards.

The petitioner retired from service on attaining his normal age of superannuation on 31st May, 2019.

By a communicating letter dated 5th June, 2018, the petitioner was requested to submit a formal application for pension in the prescribed form.

By a further communication made by the Chairman of the Tarakeswar Municipality on 27th June, 2019, the petitioner was directed to deposit a sum of Rs.2,74,534/- only being excess drawal of pay for the period 13th August, 2004 to 30th October, 2017 by 12th July, 2019.

The petitioner is aggrieved by the same.

It has been submitted that as there was no error on the part of the petitioner in receiving the amount which was disbursed as salary to the petitioner by the employer, accordingly, the petitioner ought not to have been directed to refund the alleged excess drawal of pay.

It has been submitted that the petitioner received the aforesaid amount on the basis of the order passed by the Chairman of the Municipality in the year 2004. The petitioner was no way involved in either fixation of pay or enhancement of pay.

It has been submitted that the petitioner was unaware of the fact that the enhanced payment was subject to the order of approval by the Government.

Reliance has been placed on the decision delivered by the Hon'ble Supreme Court in the matter of State of Punjab & Ors. -vs- Rafiq Masih (White Washer) & Ors. reported in (2015) 2 SCC 334.

Reliance has also been placed on an unreported judgment dated 19th August, 2019 passed by the Hon'ble Division of this Court in W.P.S.T. 79 of 2019 (State of West Bengal & Ors. -vs- Subrata Sankar Roy & Anr.).

It has been submitted that in Rafiq Masih (supra), the Hon'ble Supreme Court laid down the instances where the recovery from the employee would be impermissible in law.

It has been contended that as the petitioner received the enhanced pay on and from 2004 till the

date of his retirement which is a considerable period of time, accordingly, it will not be proper for the employer to seek refund of the amount allegedly paid as excess.

The petitioner prays for setting aside the impugned communication dated 27th June, 2019.

The prayer of the petitioner has been opposed by the Municipality.

It has been averred in the affidavit-in-opposition filed by the Municipality that the pay was enhanced with effect from 1st August, 2004 subject to the Government approval. The Director of Local Bodies is yet to approve the increase in pay of the Rent Collector of the Municipality.

It has been submitted that the petitioner was informed way back in 2017 regarding refund of the overdrawal amount. The petitioner did not take any steps to challenge the same. Only after the petitioner retired from service and notice was issued for refunding the excess amount that the petitioner filed the present writ petition.

Learned advocate appearing for the State respondents submits that the Municipality enhanced the scale of pay of the Rent Collectors of the Municipality at par with the scale of pay of the Rent Collectors in the Government. The said revision was made by way of an internal arrangement between the municipal authority and the union of the Municipality. The Government never approved the said increase/revision of pay.

It has been submitted that the Government ought not to be burdened with the extra amount which is required to be paid on account of the revision. The same will amount to unjust enrichment.

Learned advocate appearing for the State respondents distinguishes the ratio of the judgment in the matter of Rafiq Masih (supra) and Subrata Sankar Roy (supra).

I have heard and considered the rival submissions made on behalf of all the parties.

It appears that the scale of pay of Rent Collectors of the Municipality was revised by the Municipality by way of a bipartite agreement entered into by the Municipality and the union of the Municipality. The Government never approved the said revision of pay.

The petitioner, while in service, was intimidated by the Municipality regarding recovery of the excess amount from the salary of the employee on and from November 2017. It appears that the petitioner accepted the same and never raised any objection thereto.

The impugned communication mentions about the refund of the excess drawal of pay for the period 13th August, 2004 till 30th October, 2017. The same implies that from November 2017 till May 2019 the Municipality paid the salary of the petitioner at the reduced scale of pay.

The same further implies that the petitioner submitted to the jurisdiction of the Municipality and voluntarily accepted the salary at the reduced rate.

At this stage, the petitioner is estopped from challenging the same and he will not be permitted to submit that he will not be bound to refund the excess payment received by him.

Permitting the petitioner to retain the excess amount will amount to approval of the decision taken by the Municipality pursuant to the bipartite agreement entered in between the Municipality and the Union which was not approved by the Government. Moreover, the excess payment was received by several Rent Collectors. The State Government ought not to bear the extra financial responsibility of the said Rent Collectors who received money without the approval of the State Government.

The decision relied upon by the petitioner in the case of Rafiq Masih and Subrata Sankar Roy (*supra*), in my opinion, will not be applicable in the facts and circumstances of the instant case.

In Rafiq Masih and in Subrata Sankar Roy (*supra*), decision to recover the excess amount was intimated to the employee after retirement.

In the present case, the decision to recover excess payment was intimated to the petitioner while he was in service and the petitioner accepted the said proposal for refund and has actually accepted salary at the reduced rate on and from November, 2017 till the date of his retirement on 31st May, 2019.

In view of the above, the prayer of the petitioner for setting aside the impugned order seeking refund cannot be interfered with as the same appears to have been acted upon and accepted by the petitioner.

The writ petition, accordingly, fails and is hereby dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)