

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 12 of 2023

**The State of West Bengal & Ors.
VS.
Sri Soumen Banerjee & Anr.**

For the Petitioners : Mr. Tapan Kr. Mukherjee, AGP
Mr. Tapas Kr. Dey Advocates

For the Private Respondent : Ms. Subarna Das,
Mr. Bibek Chatterjee,
Mr. Tanmoy Chakraborty,
Ms. Susmita Saha, Advocates

Heard & Judgment on : **August 02, 2023**

DEBANGSU BASAK, J.

- 1.** The writ petition is directed against an order dated September 14, 2022 passed in OA 697 of 2019 by the West Bengal Administrative Tribunal.
- 2.** By the impugned order, the Tribunal found the case of the private respondent to be covered by the decision of the Supreme Court in **(2015) 4 SCC 334 (State of Punjab & Ors. vs. Rafiq Masih (White Washer))**.

3. Learned senior advocate appearing for the writ petitioners submits that, the Tribunal failed to take into account the fact that employee concerned, approached the High Court in a writ petition and gave an undertaking to the effect that he will refund excess amount overdrawn, in the event, it was found to be so. He contends that, the employee concerned was bound by such an undertaking given to the Court. The employee concerned thereafter went missing.

4. The respondent herein approached the civil Court for the purpose of declaring the employee as dead. Subsequently, the private respondent applied by a writing dated April 14, 2018 for release of the death benefit of the deceased employee. He refers to the letter dated April 14, 2018 and submits that, the respondent agreed to deduct the recovered amount from the account of the deceased employee.

5. Learned senior advocate for the petitioners draws the attention of the Court to **(2012) 8 SCC 417 [Chandi Prasad Uniyal & Ors. vs. State of UK & Ors.]**, **(2014) 8 SCC 883 [State of Punjab & Ors. vs. Rafiq Masih (White Washer)]** as also a decision of the Division Bench dated **June 30, 2023** rendered in **WPA 10545 of 2020 [Renuka Sarkar vs. The State of West Bengal & Ors.]** with **FMA 511 of 2021 [State Bank of India & Ors. vs. Sumita Bhadra & Anr.]** in support of his contentions.

6. Learned advocate appearing for the private respondent submits that, the case of the private respondent is covered by the decision of the Supreme Court rendered in **Rafiq Masih (White Washer)** (supra).

7. Neither in **Chandi Prasad Uniyal** (supra) nor in **Rafiq Masih (White Washer)**(supra), was an undertaking given by the employee concerned, as in the nature involved in the present writ petition. Again,

before the Special Bench in **Renuka Sarkar** (supra) the issue fall in for consideration was whether, excess amount paid to the retiree by mistake can be recovered or not.

8. In none of the three cases, was there any involvement of any undertaking given by the employee concerned.

9. In the facts of the present case, the employee before being declared dead by a civil Court, approached the High Court for the purpose of pay fixation. His writ petition was disposed of by an order dated October 7, 1993 directing that, his pay fixation be made under Rule 5(A) of the West Bengal Service Rule Part-I with effect from April 1, 1981 on the condition that he will give a written undertaking to refund the money if drawn in excess on the recommendation of the Finance Department.

10. Moreover, the private respondent withdrew the money after the deceased employee who was declared dead by the civil Court, on the express condition that, the death benefit be released after deducting the recovered amount.

11. The private respondent steps into the shoes of the deceased employee so far as the pay receivable and the death benefits of the deceased employee are concerned. The deceased employee during his life time was governed by the decision of the High Court rendered in the writ petition filed by the deceased employee which was disposed of by the order dated October 7, 1993 requiring the deceased employee to give an undertaking to refund the overdrawn amount. Moreover, the private respondent withdrew the amount on the plea that the death benefits be released after deducting the recovered amount.

12. In such circumstances, we are of the view that, the ratio of **Chandi Prasad Uniyal** (supra), **Rafiq Masih (White Washer)**(supra) and

Renuka Sarkar (supra) not applicable to the facts and circumstances of the present case in view of the undertaking given by the deceased employee during his life time and in view of the anvil on which the private respondent withdrew the death benefits of the deceased employee.

13. In such circumstances, we set aside the impugned order of the Tribunal.

14. WP.ST 12 of 2023 is **disposed of** accordingly without any order as to costs.

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

(Debangsu Basak, J.)

16. I agree

(Md. Shabbar Rashidi, J.)