

31.07.2023
DL-71
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 2675 of 2023

Prabir Kumar Mondal
Vs.
The Learned Registrar General (Appellate Side),
High Court, Calcutta & Ors.

Mr. Alok Roy Chowdhury,
Ms. Anindita Roy Chowdhury
....for the petitioner.

Mr. Bratin Kumar Dey
....for the respondent no.1.

Mr. Rajarshi Basu,
Mr. Subhendu Sengupta
....for the State.

Written instruction handed over on behalf of the
learned District Judge is retained with the records.

The petitioner has challenged an order dated
April 16, 2021 issued by the District Judge, North 24-
Parganas. The petitioner has been working as a Part-
Time Karmabandhu (Part-Time Sweeper) and has
been drawing a monthly consolidated remuneration of
Rs.7,000/-. The said remuneration has been granted
to the petitioner vide order dated April 2, 2015 issued
by the learned District Judge. By the impugned
memo dated April 16, 2021, the excess amount for
the period between April 2, 2015 and April 19, 2021
was sought to be recovered from the petitioner in 6
monthly equal instalments.

Mr. Basu, learned counsel appearing on behalf of the District Judge submits that the said impugned order was passed in view of the memo dated November 27, 2017 issued by the Principal Secretary, Finance (Audit) Department, Government of West Bengal, whereby the remuneration of Part-Time Karmabandhu was enhanced to Rs.3,000/- per month. Therefore, the petitioner was not entitled to get a consolidated remuneration of Rs.7,000/- per month.

Mr. Roy Chowdhury, learned counsel appearing on behalf of the petitioner submits that the said amount of Rs.7,000/- was not given to the petitioner due to any fraud or misrepresentation. Therefore, withdrawal of any overdrawn amount will cause undue hardship and prejudice to the petitioner.

Considering the submissions of the parties and the materials placed on record, this Court is of the view that the petitioner's post is akin to a group – D employee. The additional benefits/excess amount paid to the petitioner was not due to any fraud or misrepresentation on the part of the petitioner. Prior to issuance of the Finance Department's memo dated November 27, 2017, the petitioner's remuneration was enhanced by the office of District Judge vide order dated April 2, 2015.

The petitioner received the enhanced remuneration for more than 5 years when suddenly by the impugned memo dated April 16, 2021, the excess amount was sought to be withdrawn by the learned District Judge.

There is no explanation as to why despite the Finance Department's memo dated November 27, 2017, no steps were taken by the District Judge between 2017 and 2021.

The petitioner is squarely covered by the decision of the Hon'ble Apex Court in **State of Punjab & Ors. vs. Rafiq Masih** reported in (2015) 4 SCC 334.

In such view of the matter this Court finds infirmity in the decision making process of the impugned memo dated April 16, 2021.

Accordingly, the impugned memo is set aside and/or quashed.

No amount will be sought to be recovered from the petitioner being the differential amount of the pay that the petitioner was entitled to under the 2017 Memo of the Finance Department as opposed to the memo dated April 2, 2015 granting excess payment to the petitioner.

The petitioner cannot be made to suffer due to an erroneous decision on the part of the learned District Judge.

Accordingly, **WPA 2675 of 2023** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)