

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

**Present :
Hon'ble Justice Shekhar B. Saraf**

WPA 3440 of 2020

**Swapan Kumar Das
Vs.
The Union of India & Ors.**

Mr. S. S. Sarker
Ms. Tanusri Chanda
..for the petitioners

Mr. Arijit Banshi
...for the respondent nos.2 & 4

Mr. N. L. Singhania
Ms. Sanchari Chakraborty
... for the respondent no.1

Heard on: 08.09.2023 & 20.09.2023

Judgement on: 20.09.2023

Shekhar B. Saraf, J.:

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order dated March 17, 2018 passed by the respondent authorities wherein two advance increments that were granted to the writ petitioner were cancelled and his pay was refixed.

2. It is to be noted that the petitioner is a Class 'C' employee and this action was taken one and a half years prior to his superannuation.

3. It is further to be noted that in the year 2009 the authorities were aware of such anomaly but continued to make such payment as per their own orders. One is unable to understand the logic behind having to wait for nine years in total and one and a half years before the superannuation of the petitioner to carry out this refixation.

4. It is also to be noted that this order was passed without granting any opportunity of hearing to the petitioner and the petitioner was only allowed to make a representation subsequent to passing of the order.

5. Needless to mention, such representation was never answered to and the respondent authorities failed miserably in addressing the concerns of the petitioner.

6. Keeping in view, the judgement of the Supreme Court in **State of Punjab & ors. etc. Vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334** wherein the Supreme Court has held as follows :

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in

excess of their entitlement. Be that as it may, based on the decision referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (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."

7. I am of the view that the order dated 17th March, 2018 is not in consonance with the Supreme Court judgement and is, accordingly, required to be quashed and set aside.

8. I understand that by an interim order the amount that has been deducted from the petitioner has already been kept aside by

the respondent authorities in a separate interest bearing bank account with a nationalised bank. Accordingly, that amount should be paid along with the accrued interest to the petitioner within a period of two months from date.

9. I make it clear that I have not gone into the merits of the issue with regard to whether the post was a sanctioned post or not. The petitioner shall be at liberty to file a separate application before the appropriate forum with respect to the above issue.

10. With above observations, this writ petition is disposed of.

11. All parties are to act on the basis of *website* copy of this order.

(Shekhar B. Saraf, J.)