

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 11763 of 2015

Sayed Nurul Huda
Versus
Calcutta State Transport Corporation & Ors.

For the petitioner : Mr. Manas Kumar Ghosh
Ms. Susmita Dey (Basu)

For the respondents/ : Mr. Amal Kumar Sen
CSTC Mr. Sabyasachi Mondal

Heard on : 30th November, 2023

Judgment on : **30th November, 2023**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order dated 29th August, 2013, passed by the Managing Director of the respondent/Corporation, whereby a sum of Rs.1,09,233/- was directed to be recovered from the petitioner, by refusing to accept that such recovery would constitute financial hardship to the petitioner.
2. Shorn off unnecessary details, the facts are, the petitioner on 13th December, 1989 was appointed as a Security Guard by the

respondent no.1 in the pay scale of Rs.800-1265/-. Subsequently, on 9th January, 1991, his pay was raised to Rs.815/-. On 6th March, 1992, the petitioner was appointed as a conductor in the scale of pay of Rs.1040-1920/-. Initially, he was under probation for a period of one year from 6th March, 1992. However, due to unsatisfactory performance, his probation period was extended. The petitioner was allowed increments and his pay was raised to Rs.1065/- as on 1st October, 1993 and subsequently to Rs.1090/- as on 19th December, 1994. Since, according to the respondents there was no improvement in the petitioner's performance, he was later reverted back to the parent post of Security Guard.

3. Although, as on 1st March 1995 the petitioner's pay ought to have been refixed at Rs.845/- and personal pay Rs.245/- by allowing usual increment in the post of Security Guard having scale of pay of Rs.800-1265/-, however, due to wrong fixation of pay he was allowed basic pay of Rs.1028/- and personal pay of Rs.12/- as on 1st March, 1995 in the scale of pay of Rs.800-1265/-. During the subsequent period, by reasons of subsequent revision of pay and allowances in the year 1998, the scale of pay of Security Guard was enhanced to Rs.2700-4400/- when the petitioner's pay ought to have been fixed to Rs.2700/- and Rs.230/- as personal pay with effect from 1st June, 1996. However, in his case his pay was wrongly fixed at Rs.3225/- in the scale of Rs.2700-4400/- as on 1st June, 1996. Due to the aforesaid wrong fixation of pay during the period

1st March, 1995 to 31st July, 2008 an overpayment of Rs.1,09,233/- was made to the petitioner. Since, according to the respondents, the aforesaid payment was erroneously made, the Managing Director of the Corporation by an order dated 5th April, 2012 had directed that the same should be realized from the petitioner's monthly salary on easy instalments and the petitioner's pay should be refixed.

4. Being aggrieved, the petitioner had filed a writ petition, which was registered as WP No.16921 (W) of 2013. A Coordinate Bench of this Court on 3rd July, 2013, by taking note of the judgment delivered in the case of **Chandi Prasad Uniyal & Ors. v. State of Uttarakhand & Ors.**, reported in **AIR 2012 SC 2951** and having regard to the recovery being effected from the petitioner without affording him any opportunity of hearing to explain his hardship, was pleased to set aside the said order by granting liberty to the petitioner to submit a representation before the Managing Director of the Corporation for the Managing Director to consider the same. It was further provided that in the event on consideration of the petitioner's representation the Managing Director accepts the petitioner's version, whatever amount had been deducted from the petitioner's salary shall be refunded to him immediately and on the contrary if the Managing Director is once again of the view after consideration of the petitioner's version that he has drawn excess amount, a reasoned order shall be passed and in such event the

Managing Director shall be at liberty to direct recovery of further sum.

5. In terms of the liberty granted to the petitioner, by a communication dated 17th July, 2013 while providing particulars of his salary, the petitioner had made a detailed representation addressed to the Managing Director of the Corporation informing that recovery of the aforesaid amount would cause extreme hardship to him as he was drawing a meager amount of salary.
6. In consideration of the aforesaid representation, the Managing Director of the Corporation by an order dated 29th August, 2013 appears to have rejected the petitioner's contention of hardship and had directed recovery of the aforesaid sum of Rs.1,09,233/- from the petitioner's salary by way of easy instalment of Rs.1000/- per month. Challenging the aforesaid order, the present writ petition has been filed.
7. Mr. Ghosh, learned advocate representing the petitioner submits that although, the petitioner had by making a detailed representation informed the Managing Director that the recovery of the aforesaid amount would cause extreme hardship to him, the same was not considered. The Managing Director of the Corporation while passing the order impugned failed to take into consideration that the petitioner was a Security Guard and he was drawing a meager amount as salary.

8. It is submitted that the Managing Director of the Corporation while placing reliance of irrelevant considerations, *inter alia*, as regards the hardship to be faced by the Corporation if recovery is not made, had directed the aforesaid sum of Rs.1,09,233/- to be recovered from the petitioner.
9. In support of his aforesaid contention that no recovery is permissible when the same causes extreme hardship he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.*** reported in **(2015) 4 SCC 334**. He submits in the given facts if the aforesaid order of recovery is permitted to be sustained, the same would be iniquitous to say the least.
10. *Per contra*, Mr. Sen, learned advocate representing the respondent/Corporation, submits that the aforesaid decision had been taken by the Managing Director of the respondent/Corporation in terms of the order passed by a Coordinate Bench of this Court.
11. By placing reliance on the order dated 3rd July, 2013, he submits that the previous direction to recover the amount from the petitioner was set aside solely on the ground that the petitioner had not been given an opportunity of hearing. He submits it had been the view of the Coordinate Bench that an amount paid in excess of an employee's entitlement, can be recovered by the employer only

after granting an opportunity of hearing to the employee to be affected thereby.

12. Referring to the judgment delivered in the case of ***Rafiq Masih (White Washer)*** (supra), it is submitted that the Hon'ble Supreme Court had clearly concluded that that previous direction issued in the first case of ***State of Punjab & Ors v. Rafiq Masih (White Washer)*** reported in **(2014) 8 SCC 883** and the observation made therein by the Hon'ble Supreme Court not to recover the excess amount paid to the appellant therein were in exercise of its jurisdiction under Article 142 of the Constitution.
13. In the instant case, the petitioner had ten years of service left when the recovery was directed to be made. It is not a case where the excess amount paid is being sought to be recovered after retirement. Having regard to the aforesaid, he submits no interference in this case is called for especially when the Managing Director of the Corporation had granted easy instalments of Rs.1000/- per month. By placing reliance on a chart, which is taken on record he submits that the entire amount of Rs.1,09,233/- has already been recovered from the petitioner prior to his superannuation.
14. Heard learned advocates appearing for the respective parties and considered the materials on record. In the case at hand it appears that while the petitioner was in service as security guard he was engaged as a conductor by the respondent/Corporation. At the

material point of time his pay was re-fixed. Subsequently, when the petitioner was reverted back to the post of Security Guard, there had been wrongful refixation of his salary, which led to excess payment. Admittedly, the computation error is in relation to refixation of the petitioner's salary for the year 1992-93 when the petitioner was in pay scale of Rs.800-1265/- . The aforesaid mistake was detected by the respondents only when a Coordinate Bench of this Court by an order dated 8th June, 2011 had directed fixation of the petitioner's salary since, the petitioner had complained of irregularities in connection with the fixation of his salary.

15. Records reveal that by an order dated 5th April, 2012, the Managing Director of the Corporation upon ascertaining that the petitioner's pay had been wrongly refixed, had directed recovery of Rs.1,09,233/- from the petitioner's salary.

16. Since, the aforesaid direction was issued without even taking into consideration the petitioner's hardship and without affording the petitioner an opportunity of hearing, a Coordinate Bench of this Court at the instance of the petitioner while setting aside the order impugned, granted liberty to the petitioner to make a representation before the Managing Director for him to consider the same.

17. Pursuant to the aforesaid, the petitioner having made a representation, the Managing Director of the Corporation taking

into consideration the same and while refusing to accept the plea of hardship put forward by the petitioner, had directed recovery of the amount drawn in excess by the petitioner, to be recovered from him, in easy instalments.

18. The question that falls for consideration in the present writ petition is whether the Managing Director of the Corporation was bound to appropriately consider the plea of hardship as raised by the petitioner. It is noticed, that the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors.** reported in **AIR 2012 SC 2951** was, *inter alia*, pleased to observe as follows:-

“We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possible, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in any situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can

always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered”.

19. Having regard to the aforesaid, it would appear that recovery of amount paid in excess can certainly be recovered barring few exceptions of extreme hardship but not as a matter of right. The aforesaid issue on the question of hardship fell for consideration before the Hon’ble Supreme Court in the second case of **Rafiq Masih** (supra), the Hon’ble Supreme Court in paragraph 7 of the said judgment having taking note of the various judgments delivered by the Hon’ble Supreme Court was, *inter alia*, pleased to observe as follows:

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer’s right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to

be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, “for doing complete justice in any cause” would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court”.

20. After observing as such, the Hon’ble Supreme Court in paragraph 18 of the said judgment has detailed the eventualities where recovery would be impermissible by reasons of hardship caused. The relevant portion is extracted hereinbelow:-

“18. 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 decisions referred to hereinabove, we may, as ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the 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”.*

21. In this case, it is noticed that the petitioner at the relevant point of time was drawing salary in the pay scale of Rs.815-1265/- when an excess amount was drawn by him. Admittedly, the petitioner had no role to play in drawing the excess amount as the excess amount was disbursed in his favour by reasons of wrong fixation of salary for the period from 1st March, 1995 to 2008. After more than one and a half decade of such wrong fixation of petitioner's salary and disbursement thereof the Managing Director of the Corporation had purported to re-fix the petitioner salary and directed recovery. Although, the petitioner had categorically spelt out that the aforesaid amount if recovered, would cause immense hardship to him, the Managing Director of the Corporation had refused to accept the plea of financial hardship.

22. Since, it is now well-settled that no recovery of this nature can be made from the employees who have received payment in good faith and since, the petitioner falls under the exceptions provided in

paragraph 18(i) of the judgment delivered in the second case of **Rafiq Masih** (supra) and taking into consideration that if the aforesaid direction for recovery is permitted to be sustained the same would not only be iniquitous, but the same would result in financial hardship of the petitioner, I am of the view that the order passed by the Managing Director of the Corporation on 29th August, 2013 directing recovery of a sum of Rs.1,09,233/- cannot be sustained. The same is accordingly, set aside and quashed. As a sequel thereof, the recovery effected from the petitioner's salary by the respondent/Corporation also cannot be sustained.

23. Since, I have been informed by the parties that the petitioner has already been superannuated I direct the respondents to refund the aforesaid amount of Rs.1,09,233/- to the petitioner within four weeks from the date of communication of this order.
24. With the above observations/directions, the writ petition is disposed of.
25. There shall, however, be no order as to costs.
26. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)