

12.12.2023
Court No. 13
Item No. 19
AP

WPA 14288 of 2023

**Sikha Dutta
Vs.
The State of West Bengal and Ors.**

Mr. Mrinal Kanti Ghosh
Mr. Chandra Nath Sarkar

... For the Petitioner.

Mr. Subhendu Sengupta

... For the State.

Mr. T.M. Siddiqui
Mr. S. Adak

... For the WBSMICL.

1. The petitioner is a widow of an employee of the West Bengal State Minor Irrigation Corporation Limited (hereinafter referred to “the WBSMICL”)

2. The petitioner seeks refund of third benefit under the Modified Career Advancement Scheme, 2001 (hereinafter referred to as “the MCAS”) implemented in the year June 2010 by the employer, the WBSMICL.

3. The husband of the petitioner received the benefit while in service and died on 7th July, 2018 while on service. Subsequently, the State Government took the view that the employees of the autonomous bodies and the WBSMICL were not entitled to the benefits of the MCAS, 2001. Effected recovery of the said amount post superannuation in 2019.

4. The respondents have filed a report before this Court.

5. Counsel for the petitioner would rely upon a decision of the Supreme Court in the case of ***State of Punjab and Ors. v. Rafiq Masih (White Washer) & Ors.***, reported in ***(2015) 4 SCC 334***.

6. Counsel for the respondents would, however, rely upon the decision of the Supreme Court in the case of ***High Court of Punjab & Haryana and Ors. Vs. Jagdev Singh*** reported in ***(2016) 14 SCC 267***.

7. In the ***Jagdev Singh decision (supra)*** an exception carved out to the ***Rafiq Masih case*** where a Civil Judge (Junior Division) of the State of Punjab and Harayana had undertaken before the authorities before receiving the revised pay scales that he would refund the same in case it is found that he was not entitled to the same.

8. It was also held in paragraph 11 of the ***Jagdev Singh (supra)*** decision that there cannot be any straitjacket formula or rule laid down that in all cases where undertakings are given by employees for refund, the employer would be entitled to recover the excess amounts paid.

9. For example a Division Bench of this Court in the case of same employer, WBSMICL dated 4th July, 2022 in MAT 750 of 2022 ***(West Bengal State Minor Irrigation Corporation Ltd. & Ors. Vs. Prodosh Kumar Kundu & Ors.)*** held that even if the payment under the MCAS was provisional the employer WBSMICL should not be

permitted to recover the amounts, in equity and fairness to the employee.

10. There is definitely, therefore, a difference between the status of a Civil Judge (Junior Division) as in the case of **Jagdev Singh (supra)** and a Group B employee of the WBSMICL as in the instant case.

11. In the aforesaid circumstances, having regard to the spirit of the **Rafiq Masih (supra)** as clarified in the **Jagdev Singh (supra)** and as enunciated in the **Prodosh Kumar Kundu (supra)**, this Court directs the respondents to refund all excess amounts recovered from the petitioner, however, without any interest, burden or liability on the State, within a period of two months from date.

12. With the aforesaid directions, the writ petition is disposed of.

13. There shall be no order as to costs.

14. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)