

Dd 04 28.07.2023

**WP.ST 179 of 2015
With
IA NO: CAN 3 of 2023**

**Pravakar Mondal
Vs.
State of West Bengal & Ors.**

*Mr. Biswarup Biswas,
Mr. Gora Chand Samanta, Advocates
... .. For the Petitioner*

*Ms. Sonal Sinha,
Mr. Vijay Agarwal, Advocates
... .. For the State*

In Re : IA NO: CAN 3 of 2023

CAN 3 of 2023 is an application for restoration. Considering the pleadings in the writ petition for restoration and for the ends of justice, we recall the order of dismissal dated July 20, 2023. We restore WP.ST 179 of 2015 to its original file and number. CAN 3 of 2023 is **disposed of** accordingly.

In Re : WP.ST 179 of 2015

The writ petition is directed against an order dated March 3, 2015 passed in OA 1004 of 2012.

By the impugned order, the learned Tribunal, granted protection against overdrawl to the petitioner on the basis of ratio of decision in **(2015) 4 SCC 334 [State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc.]**.

Learned advocate draws our attention to the sequence of events. He submits, initially, the petitioner was appointed on temporary basis. The service of the petitioner was, thereafter, confirmed. Subsequent to his confirmation, he was granted two promotions. The promotions were granted at the behest of the

authorities after taking into consideration all relevant facts. There was an earlier proceeding before the Tribunal with regard to release from the junior post to the promoted post. Authorities considered the representation and allowed the petitioner to join the promoted post. Consequently, the grant of promotion should be accepted to be validly made. Petitioner should be allowed to derive the pensionary benefits on the basis of the two promotions granted.

State is represented.

The Tribunal considered the factual matrix of the case. Tribunal discussing the factual matrix, found the initial appointment of the petitioner to be irregular. Tribunal also found that, the subsequent promotion, therefore, stood vitiated. Considering the fact that the petitioner was not responsible for the withdrawal of higher grade of pay consequent to his promotion, the Tribunal granted protection to the petitioner with regard to overdrawl, in view of the ratio of decision in **Rafiq Masih (White Washer)** (supra).

As noted by the Tribunal, the initial appointment of the petitioner was irregular. He was initially appointed on temporary basis and subsequently confirmed. Our attention was not drawn to any selection procedure for the initial appointment. Consequently, we concur with the view of the Tribunal that the subsequent promotion stood vitiated, in view of the initial appointment being irregular.

In such circumstances, we find no merit in the present writ petition.

WP.ST 179 of 2015 is **dismissed** without any costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)