

Form No. J(2)

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 143 of 2016

The State of West Bengal & ors.

Vs.

Ashok Ranjan Chandra

For the State/writ petitioners : Mr. Tapan Kr. Mukherjee,
Senior Advocate & Ld. A.G.P.
Mr. Pinaki Dhole, Advocate
Mr. Somnath Naskar, Advocate

For the Respondent No.1 : Mr. Kanailal Samanta, Advocate
Mr. Milan Kumar Maity, Advocate

For the Respondent No.5 : Mr. Suman Basu, Advocate

Hearing on : 04.10.2023

Judgment on : 04.10.2023

DEBANGSU BASAK, J.:-

1. The writ petition is at the behest of the State. State assails an order dated June 12, 2015 passed by the learned Administrative Tribunal in O.A.1358 of 2014.

2. By the impugned order, the Tribunal, relied upon the decision of the Supreme Court rendered in **(2015) 4 Supreme Court Cases 334 [State of Punjab and ors. vs. Rafiq Masih (White Washer) & ors]** and directed refund of a sum of Rs.1,20,828/- which was deducted from the entitlement of the private respondent.

3. Learned Senior Advocate appearing for the State, draws the attention of the Court to the supplementary affidavit filed by the State pursuant to the order dated August 28, 2023 and the response thereto by the private respondent. He submits that, the private respondent was appointed as a Group-D staff on ad hoc basis on June 17, 1986. He was promoted as an Assistant Cashier on September 30, 1994 on temporary basis on and from October 21, 1994. He was reverted to his original post of Peon on June 9, 1998. The order of reversion dated June 9, 1998 was challenged by the private respondent before the Tribunal in O.A.3124 of 1998. By an order dated June 3, 1999, the Tribunal set aside the order of reversion. State approached the High Court by way of WPST 1 of 1999 challenging the order of the Tribunal. By an order dated

August 18, 1999, the High Court allowed the writ petition and set aside the order dated August 18, 1999.

4. Learned Senior Advocate appearing for the State submits that, the private respondent gave two undertakings in writing with regard to his pay. He refers to the supplementary affidavit and submits that, the private respondent gave undertakings on September 31, 2009 and on December 18, 2012. He submits that, the private respondent, in his affidavit dealing with the supplementary affidavit of the State, did not dispute that the signatures of the private respondent in the two undertakings were his. He submits that, the authorities passed an order dated October 3, 2012 with regard to the excess payment made to the private respondent. Such order was communicated to the private respondent as will *inter alia* appear from the undertaking dated December 18, 2012 issued by the private respondent.

5. Learned Senior Advocate appearing for the State relies upon **(1999) 2 Calcutta High Court Notes 387 (State of West Bengal and others vs. Ashoke Ranjan Chandra)** in

support of the contention, that the private respondent was directed to be reverted to his original post of Peon.

6. So far as overdrawal is concerned, learned Senior Advocate appearing for the State relies upon an unreported judgment of this Court dated August 2, 2023 passed in **WP.ST 12 of 2023 (The State of West Bengal & ors. vs. Sri Soumen Banerjee & anr.)**, (2016) 14 Supreme Court Cases 267 (*High Court of Punjab and Haryana and others vs. Jagdev Singh*), (2012) 8 Supreme Court Cases 417 (*Chandi Prasad Uniyal and others versus State of Uttarakhand and others*), (2015) 4 Supreme Court Cases 334 [*State of Punjab and others versus Rafiq Masih (White Washer) and others*] and (2014) 8 Supreme Court Cases 883 [*State of Punjab and others versus Rafiq Masih (Whitewasher)*].

7. Referring to **Rafiq Masih (White Washer) (I) (Supra)**, learned Senior Advocate appearing for the State submits that, the Supreme Court held that **Chandi Prasad Uniyal (Supra)** considered two previous authorities of the Supreme Court on the subject of overdrawal. He submits that, in **Rafiq Masih (White Washer) (I) (Supra)** Supreme Court held that (1994) 2

SCC 521 (Shyam Babu Verma versus Union of India) and **1995 Supp (1) SCC 18 (Sahib Ram versus State of Haryana)** were rendered under Article 142 of the Constitution of India whereas **Chandi Prasad Uniyal (Supra)** was under Article 141 of the Constitution of India.

8. He submits that, therefore, the ratio laid down in **Chandi Prasad Uniyal (Supra)** should be applied in the facts and circumstances of the present case.

9. Learned Senior Advocate appearing for the State submits that, the private respondent gave two undertakings and is bound thereby. The writ petitioner, therefore, should not be granted the protection as afforded by the impugned order of the Tribunal. Moreover, the Tribunal passed the impugned order without granting an opportunity of filing affidavits to the State.

10. Learned Advocate appearing for the private respondent submits that, the private respondent discharged duties of the Assistant Cashier on and from October 21, 1994 till he was sought to be reverted. The private respondent was not involved in the fixation and the grant of pay. The private respondent is

a Group-D staff and that the overdrawal should not be recovered on the basis of **Rafiq Masih (Whitewasher)-II (Supra)**.

11. Referring to the documents annexed to the supplementary affidavit, learned advocate appearing for the private respondent submits that, the first undertaking dated March 31, 2009 is not attracted since the private respondent played no role in pay fixation. Private respondent cannot be made liable for the alleged overdrawal in view of **Rafiq Masih (Whitewasher)-II (Supra)**.

12. Learned advocate appearing for the private respondent submits that, the order dated October 3, 2012 was never served upon the private respondent. The private respondent did not set and subscribe any signature in the service book. No entry in the service-book therefore, can be held as against the private respondent.

13. Referring to the undertaking dated December 18, 2012, learned advocate appearing for the private respondent submits that, although the signature appearing thereon is that of the private respondent, his client is not aware of the contents

thereof. The language used therein is not his. The private respondent was a Peon and was incapable of writing such a letter. He refers to the averments made in the affidavit filed by the private respondent particularly to paragraph-9 thereof. He submits that the private respondent should not be bound by an undertaking which was obtained by the State at the time when, the private respondent was about to superannuate.

14. Learned advocate appearing for the private respondent submits that, the private respondent is governed by the ratio laid down by ***Rafiq Masih (Whitewasher) (II) (Supra)***. The private respondent is a Group-D staff and that the so-called overdrawal should not be adjusted against the entitlement of the private respondent particularly when, the private respondent superannuated from service.

15. The records made available to the Court demonstrate that, the private respondent was appointed as a Group-D staff on ad hoc basis under the Director of Commercial Tax on June 17, 1986. He was promoted to the post of Assistant Cashier on temporary basis from October 21, 1994 and was paid the scale in respect of the post of Assistant Cashier for the period of

time that he discharged duties and functions of an Assistant Cashier.

16. The private respondent was reverted to his original post of Peon by an office order dated June 9, 1998. This office order was assailed by the private respondent by way of an Original Application being O.A.3124 of 1998 which was allowed by the Tribunal by an order dated June 3, 1999. The order of reversion dated June 9, 1998 was set aside. State challenged the order dated June 3, 1989 of the Tribunal before the High Court in WPST 1 of 1999 which was allowed by a judgment and order dated August 18, 1999 reported at **Ashoke Ranjan Chandra (Supra)**.

17. West Bengal Services (Revision of Pay and Allowance) Rules, 2009 came into being. The private respondent submitted an option under Schedule II Part A of the Rules of 2009 and elected to the revised pay structure with effect from January 1, 2006. The Form is dated March 31, 2009 and contains the following declaration :-

“I hereby undertake to refund to the Government any amount which may be drawn by me in excess of

what is admissible to me on account of erroneous fixation of pay in the revised pay structure as soon as the fact of such excess drawal comes/brought to my notice”

18. Pursuant to his election and submission of form of option as noted above, pay in respect of the private respondent was fixed by an order dated October 3, 2012.

19. By an office order dated December 18, 2012, the authorities calculated a sum of Rs.1,20,828/- covering three several periods of time to be overdrawn by the private respondent.

20. The private respondent superannuated from service on June 30, 2013. Prior thereto, he submitted a letter dated December 18, 2012 referring to the over drawal amount and the intimation thereof to him. In such letter, he prayed for adjustment of the sum of Rs.1,20,828/- by deducting such sum from the amount of gratuity receivable by him on his superannuation. Consequently, the authorities proceeded to act on the basis of his acceptance of overdrawal and his request for adjustment.

21. The private respondent approached the Tribunal by way

of OA 1358 of 2014, in which the impugned order was passed. Before the Tribunal the private respondent prayed for refund of the deducted amount of gratuity along with interest.

22. In such factual background, the authorities cited at the bar with regard to overdrawal are required to be considered.

23. ***Ashoke Ranjan Chandra (Supra)*** is the decision of the High Court in relation to the order of reversion of the private respondent from the post of Assistant Cashier to Peon. It does not speak about any overdrawal and is silent on such issue.

24. In ***Sri Soumen Banerjee and another (Supra)***, the employee concerned approached the High Court for pay fixation. His writ petition was disposed of on the undertaking that he would refund excess drawal. He went missing. He was declared dead by the Civil Court. His heir withdrew the death benefits after allowing the deductions of the overdrawn amount.

25. ***Sri Soumen Banerjee and another (Supra)*** notes ***Rafiq Masih (Whitewasher) (II) (Supra)*** as well as ***Chandi Prasad Uniyal and others (Supra)*** and ***Rafiq Masih (White Washer)***

(I) (Supra). In the facts of that case, it was held that, **Chandi Prasad Uniyal and others (Supra), Rafiq Masih (White Washer) (II) (Supra)** and in the facts of that case, held that, **Chandi Prasad Uniyal and others (Supra), Rafiq Masih (White Washer)-II (Supra)** were not applicable to the facts and circumstances of that case and that the undertaking given were valid.

26. **Chandi Prasad Uniyal (Supra)** is of the view that, amount paid due to irregular/wrong fixation of pay can always be recovered from the recipients.

27. **Rafiq Masih (Whitewasher)-I (Supra)** is a reference with regard to the so-called conflict of views between **Sham Babu Verma (Supra)** and **Sahib Ram (Supra)** on one part and **Chandi Prasad Uniyal (Supra)** on the other. It is of the view that **Sham Babu Verma (Supra)** and **Sahib Ram (Supra)** was rendered under Article 142 of the Constitution of India and that, **Chandi Prasad Uniyal (Supra)** was under Article 141 thereof.

28. Thereafter, in **Rafiq Masih (Whitewasher)-II (Supra)**, the Supreme Court laid down the following with regard to overdrawal :-

“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 employment. Be that as it may, based on the decisions referred to hereinabove, we may, as a 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 have 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.

29. In ***Jagdev Singh (Supra)*** the incumbent concerned was a Civil Judge (Junior Division) promoted to the post of Additional Civil Judge. The incumbent there furnished an undertaking to refund the excess payment, if deducted and demanded subsequently. In such context, the Supreme Court, after noticing ***Rafiq Masih (Whitewasher)-II (Supra)*** found that, sub-paragraph (ii) of paragraph 18 would not apply to the facts and circumstances of that case.

30. In the impugned order the Tribunal referred to ***Rafiq Masih (Whitewasher) (II) (Supra)*** and arrived at the finding that, the deduction of the over drawal amount from the gratuity was not permissible and, therefore, directed refund.

31. ***Rafiq Masih (Whitewasher) (II) (Supra)*** tabulates few situations where recoveries by the employers would be impermissible. It however, does not consider a situation where, the employee concerned obtained the pay fixation on the basis of an undertaking as made in by the private respondent herein. In ***Rafiq Masih (Whitewasher) (II) (Supra)*** the employees were not guilty of furnishing any incorrect information and that the payment were not on account of any

misrepresentation or fraud committed by them. Participation of the employees in the mistake committed by the employer in extending undeserved monetary benefits was totally ruled out. The employees were innocent as also employers in the wrongful determination of the inflated emoluments.

32. ***Rafiq (Whitewasher) (II) (Supra)*** did not lay down that an employee can act in breach of his undertaking given with regard to overdrawal or that such undertaking does not bind him. It cannot be construed to be a licence to act in breach of an undertaking regarding overdrawal.

33. In the facts of the present case, there is an invitation at the behest of the private respondent, in the exercise of option that the private respondent submitted on March 31, 2009 for fixation of revised pay structure under ROPA 2009. Such writing also contains an undertaking as noted above. The undertaking that the private respondent gave was to the extent that, if there was any erroneous fixation of pay in the revised pay structure he would refund the sum as soon as such facts of excess drawal is brought to his notice. The private respondent accepts that he submitted the option form

dated March 31, 2009 with the undertaking recorded therein.

34. The private respondent however, disputes that he received the office order dated December 18, 2012 stating that there was an erroneous fixation or knowing the contents of his letter dated December 18, 2012.

35. In the affidavit used by the private respondent, he denied receiving the office order dated December 18, 2012 and being aware of the contents of the writing dated December 18, 2012 although, he acknowledges that he signed the writing dated December 18, 2012.

36. As noted above, signature of the private respondent on the writing dated December 18, 2012 is admitted. Claim is that the private respondent is not aware of the contents of that letter and he signed the same while it was blank. We are unable to subscribe to the contention of the private respondent in this regard. Firstly, the signature on the document dated December 18, 2012 is admitted. Secondly, the private respondent discharged duties and functions as Assistant Cashier for a period of time. Therefore, he was discharging functions of a far more responsible post than that

of a Peon for a period of time and, therefore, he is expected to understand the consequences of signing a blank document or the contents of the document dated December 18, 2012. In any view of the matter, since the signature of the private respondent on the document concerned is admitted, we are unable to take a view that, the private respondent cannot be held responsible for the contents of such letter.

37. The letter dated December 18, 2012 is an unconditional undertaking to refund the overdrawal as quantified by the order dated December 3, 2012 of the authorities.

38. In our view, the private respondent does not fall within the categories tabulated by ***Rafiq Masih (Whitewasher) (II) (Supra)*** as being exempted from the process of recovery of the overdrawn amount.

39. In such circumstances, the learned Tribunal erred in setting aside the order dated October 3, 2012 and relying upon the ratio of ***Rafiq Masih (Whitewasher)-II (Supra)*** in order to

arrive at the finding that the overdrawal amount cannot be adjusted.

40. In view of the discussions above, we set aside the impugned order of the learned Tribunal.

41. WP.ST 143 of 2016 is **allowed** without any order as to costs.

(Debangsu Basak, J.)

42. I agree.

(Md. Shabbar Rashidi, J.)