

03
22.04.2024
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 8171 of 2024

**Samiran Mondal
-versus
The State of West Bengal & Ors.**

**Mr. Partha Sarkar,
Mr. Abhijit Basu,
Ms. Megha Sarkar.
...For the Petitioner.**

**Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray.
...For the Respondent
Nos. 3 to 6.**

None appears on behalf of the State respondents in spite of service.

The petitioner was an employee of Pujali Municipality who retired from service on attaining his normal age of superannuation on 31st August, 2022. He has not received his terminal dues in full.

According to the Director of Local Bodies, the petitioner was paid his salary in excess of his entitlement. The petitioner has been directed to refund a sum of Rs.1,84,166/- only on account of overdrawn calculation for the period 1st January, 1998 to 31st August, 2022.

The petitioner annexed his Service Book wherefrom it appears that his basic pay was refixed

after approval granted by the Assistant Director of Local Bodies in the year 2015.

A calculation sheet has been forwarded by the Director of Local Bodies to the petitioner wherefrom it appears that from January 1998 the petitioner was paid basic pay of Rs.4,000/- per month. According to the Director of Local Bodies, the petitioner ought to have been paid basic pay of Rs.3,530/- only and not Rs.4,000/-. It is from the said date that excess amount was paid to the petitioner till his date of retirement on 31st August, 2022.

The petitioner has annexed to the writ petition the order of the Chairman of the Pujali Municipality dated 20th February, 2001 mentioning that the petitioner, serving as lower division clerk, was promoted to the post of cashier in the scale of pay Rs.4,000-8,850/- with effect from 1st January, 1998 provisionally subject to the approval of the Director of Local Bodies and the Board of Councillors.

By a communication dated 28th January, 2009, the Director of Local Bodies approved the appointment of the petitioner on promotion in the Municipality in the post of cashier on and from 1st January, 1998.

The Service Book of the petitioner, accordingly, recorded the promotion. The pay of the employees stood revised in accordance with ROPA, 2009 and the basic pay in the post of cashier stood revised at Rs.13,180/- in pay band 3 and the same has been approved by the Assistant Director of Local Bodies and recorded in the Service Book of the petitioner on 22nd January, 2015.

After the petitioner retired from service in the year 2022, the Director of Local Bodies formed an opinion that the petitioner had drawn excess amount as his pay and has directed the petitioner to refund the overdrawn amount.

From the documents annexed to the writ petition, it does not appear that any amount was paid to the petitioner in excess of his entitlement. The raise in his basic pay stood approved by the Assistant Director of Local Bodies way back in the year 2015. It is too late in the day, after an employee has retired, to direct him to refund the overdrawn amount. The pay of the petitioner had been incorporated in I-OSMS maintained by the Municipality.

The Municipality recommended the case of the petitioner and submits that payment has been made to him in accordance with his appropriate scale of pay.

The Hon'ble Supreme Court in the case of ***State of Punjab & Ors. -vs- Rafiq Masih (White Washer) & Ors.*** reported in ***(2015) 4 SCC 334*** clearly laid down the instances where recovery will be impermissible in law.

The Hon'ble Supreme Court specifically laid down that recovery from the retired employees is impermissible where excess payment has been made for a period over five years before the order of recovery is issued. Recovery in cases where the employee was required to discharge duties of a higher post is also impermissible in law.

In the present case, the petitioner served in the post of cashier from the year 1998 and he has been

paid salary in accordance with his regular scale of pay. After retirement of the petitioner, there is hardly any scope for recovery of the amount as claimed.

In view of the above, the impugned communication of the Director of Local Bodies dated 22nd August, 2022 and 10th January, 2023 addressed to the Chairperson of the Municipality and the communication by the Chairperson of the Municipality to the petitioner dated 5th July, 2023 are all set aside.

The Director of Local Bodies is directed to recalculate the terminal benefits of the petitioner and disburse payment of his terminal dues at the earliest, but positively by 31st July, 2024.

The Municipality is directed to resume payment of provisional pension to the petitioner positively by 15th May, 2024 and continue paying the same till the final Pension Payment Order is issued in favour of the petitioner and payment thereof made.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)