

14th July, 2025

Item no. DL 94
Court No. 4

Asraf, A.R.(Ct.)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Case No. **WP.ST 38 of 2025**

In the matter of :

GOPINATH BANERJEE & ORS.

.... Petitioners

VS.

THE STATE OF WEST BENGAL & ORS.

....Respondents

For the Petitioners :

Mr. Lutful Haque

Mr. Soumitra Chatterjee

....Advocates

For the Respondent / State :

Mr. Tapan Kumar Mukherjee, Sr. Advocate

....Addl. Govt. Pleader

Ms. Sangeeta Roy

....Advocates

1. Petitioners have assailed the order dated 10th January, 2025 passed by the learned Tribunal in OA no.619 of 2019 whereby the learned Tribunal has passed the following :-

“...From the submissions of the learned counsels and the records presented, it is clear that the respondent authority had erroneously paid a higher wage to these applicants. Upon detection of such wrong payment, an order was passed for recovery of excess payment in instalments. The applicants have tacitly acknowledged such over payment and have not contested the

remuneration as re-fixed later. The main argument is that arbitrariness in such deduction. This Tribunal after proper examination of their arguments is not satisfied that such recovery is violative of the Judgments in Rafiq Masih's case. The reliance on an order of this Tribunal in O.A. 280 of 2017 is also not convincing for the reason that in the earlier case, the "precarious financial condition" was the main ground in favour of the applicants. Here, no such picture has been given. Therefore, the Tribunal cannot hold the decision of the District Magistrate as incorrect because he is authorized by rules to recover excess amount if paid to employees by mistake. The applicants cannot ask for perpetuation of such mistake, which has been admitted by their employer. It is also necessary to appreciate that such recovery has been planned in monthly instalments, so as not to put severe burden on the applicants. Therefore, this Tribunal, with the above observation, has come to this conclusion that such order of recovery was not incorrect and was within the legal

framework. Thus, the prayers in the application, being devoid of any merit, is disposed of without any orders.”

2. The fact of the case is that the petitioners have been working being employed as whole time and throughout the year as casual Group ‘D’ employees.
3. The learned counsel representing the petitioners has brought to the notice of this Court that these petitioners have been performing the role since long time as mentioned hereinbelow :-
 - a. Gopinath Banerjee - since 10.11.1989
 - b. Nityanarayan Chatterjee - since 02.03.1992
 - c. Ganesh Das - since 05.01.1990
 - d. Subhas Ch Kaibarta - since 27.04.1993
 - e. Swapan Kr Mal - since 08.05.1993
 - f. Kartick Bagdi - since 01.08.1994
 - g. Rakhahari Mondal - since 18.07.1993
4. He further submits that from the Proforma Wise Report of these petitioners issued by the District Magistrate & Collector, Birbhum it transpires that they have been working for more than 240 days from 1990 till 1996 and since the year 1997 they have been working nearly 350 days per year. It is submitted that from the recommendation of the

year 1996 made by the District Magistrate & Collector, Birbhum it further appears that these petitioners had been recommended to be absorbed in regular establishments in terms of the Government Order no. 100 / Emp. dated 13.03.1996 issued by the Chief Secretary, Government of West Bengal.

5. Depending upon the aforesaid facts and circumstances, the learned counsel has stressed upon the fact that these petitioners are entitled to the benefit of clause 'a' of the office memorandum dated 20th May, 2009 issued by the Deputy Secretary to the Government of West Bengal, Finance Department, Audit Branch.
6. The learned Additional Government Pleader representing the State has controverted the issues raised by the learned counsel representing the petitioner and sought to justify the order dated 23rd December, 2016 issued by the District Magistrate & Collector, Birbhum and the impugned order passed by the learned Tribunal.
7. The learned Senior Counsel for the State further stresses upon the point that the Collector has considered employment of the petitioners and has been of the opinion that these petitioners though being employed whole time but not throughout the year, as such, they are entitled to fixed pay not

exceeding Rs.6,600/- as per clause 'B' of the memorandum dated 20th May, 2009.

8. On perusal of the record and also considering the Proforma Wise Report, it transpires that these petitioners have been employed to the said posts mostly since the beginning of 1990 and even few prior to the year 1990. It also appears from the report that these petitioners were recommended to be eligible to be absorbed in regular establishments in terms of the Government Order no. 100 / Emp. dated 13.03.1996.
9. It also transpires that from the list of the persons recommended one, namely, Biswanath Singh has already been absorbed.
10. From the discussion made above, it transpires that these petitioners upon their engagement were working since long with the said Biswanath Singh who has been absorbed. These petitioners, however, have not been absorbed and are also being deprived of their remuneration which they are entitled to since they are rendering services whole time and throughout the year.
11. From the memorandum dated 20th May, 2009 it transpires that an employee employed whole time and throughout the year is entitled to be paid in the pay band scale of Rs.4,900 - 6,200/- (PB - 1)

with Grade pay of Rs.1,700/- plus allowances as admissible to whole time Government employees

12. These petitioners considering their span of work and dedication being given by them during the past several years are entitled to be placed within the category of whole time and throughout the year as per clause 'a' of the memorandum dated 20th May, 2009.
13. Having been of this view, this Court directs that the order dated 23rd December, 2016 passed by the District Magistrate & Collector, Birbhum and the order passed by the learned Tribunal dated 10th January, 2025 are hereby set aside.
14. The concerned Authority is directed to refund the amount which has been recovered from the employees.
15. We also consider it necessary to express our view that the order of the Tribunal is in contravention of the law laid down by the Hon'ble Apex Court in the case of State of Punjab & Ors. VS. Rafiq Masih wherein at paragraph 18 the Hon'ble Apex Court has given illustration of hardships wherein recovery may not be permissible. The judgment takes into consideration the fact that recovery, if made, from the Group D employees like the petitioners; and if the benefit has been received

for more than five years, would result in hardship without any fault of theirs.

16. The Tribunal's order approving the recovery is clearly unsustainable, in view of the law as declared by the Hon'ble Apex Court in the case of Rafiq Masih (supra), we direct that the amounts recovered from the petitioners be refunded to them within a period of three months from the date of communication of this order. For the sake of transparency, the refund should be accompanied by a detailed calculation showing the amount.
17. The writ petition being **WP.ST 38 of 2025** stands **allowed** and accordingly disposed of.
18. Parties to act on the basis of server copy of this order duly downloaded from the official website of this Hon'ble High Court.
19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after complying with all requisite formalities.

(**Madhuresh Prasad, J.)**

(**Supratim Bhattacharya, J.)**