

13.01.2025
Sl. No.29
Ct. No.15
S.A.

WPA 5562 of 2024

Manilal Ruidas @ Phani Ruidas

-vs-

The State of West Bengal & Ors.

Mr. Malay Bhattacharyya

Mr. Subhrajyoti Ghosh

Ms. Sudipa Sen Gupta

...for the petitioner

Mr. Sandipan Banerjee

Mr. Arijeet Bhattacharjee

...for Durgapur Municipal Corporation

Mr. Rezaul Hossain

...for the State

The petitioner retired as a Group-D employee of the Durgapur Municipal Corporation on August 31, 2021. It is undisputed that the petitioner has not been paid his retiral dues, including pension. It appears that by a letter dated May 11, 2023, the Durgapur Municipal Corporation requested a refund of Rs. 3,02,651 (Rupees three lakh two thousand six hundred and fifty-one) as an overdrawn amount from the petitioner.

The learned advocate appearing for the Corporation submits that since the petitioner has not refunded the amount, the payment of his retiral dues, including pension, has been withheld.

However, in light of the judgment of the Hon'ble Supreme Court reported at **(2015) 4 SCC 334 [State of Punjab vs. Rafiq Masih (White Washer)]**, the

order dated May 11, 2023, cannot be upheld. The relevant portion of the judgment is as follows:

“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 entitlement. 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 has 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.”

In light of the above, the order dated May 11, 2023, issued by the Corporation (appearing at page 49 of the record) is hereby set aside.

The respondent is directed to take the necessary steps to release the petitioner's retiral dues, including pensionary benefits and arrears, within a period of two months from the date of this order.

Accordingly, **WPA 5562 of 2024** is disposed of.

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

(Kausik Chanda, J.)