

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 5675 of 2018

Sri Dipankar Das & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners

: Mr. D.N. Ray, Sr. Adv.

Mr. Atanu Biswas,

Mr. Sourav Haldar,

Mr. Mrinal Saha,

Mr. Sourav Saha.

For the Respondent No. 3

: Ms. Rajdatta Chattopadhyay,

Ms. Risha Das,

Mr. Dibeyndu Banerjee.

Judgment reserved on

: 29.10.2025

Judgment delivered on

: 26.11.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred praying for direction upon the respondents to show cause as to why the Memo No. 663/DLB/Verification 1/2002 (pt-1) dated 27-05-2013 issued by Director of Local Bodies, West Bengal as well as Order No. Adm/1E-2017/123/641 dated 01-11-2017 issued by the

Chairman, Tarakeswar Municipality shall not be quashed and / or set-aside for the ends of justice.

- 2.** It is further prayed that the respondents be directed to approve the petitioners service in Group - "C" Post in the scale of pay Rs. 3350/- - 6325/- (erstwhile Rs. 300/- 685/-) which they were enjoying since August, 2003 to October, 2017 and have further prayed for direction that the respondents should not give effect to the Memo No. 663/DLB/Verification-1/2002 (pt-1) dated 27-05-2013 issued by Director of Local Bodies, West Bengal as well as Order No. Adm/1E-2017/123/641 dated 01-11-2017 issued by the Chairman, Tarakeswar Municipality.
- 3.** The petitioners' case herein is that they were appointed as Rent Collectors (Group-D") at Tarakeswar Municipality in 1994. Subsequently due to retirement of several Group-"C" staffs, and as per order passed by the Chairman of said Municipality, the petitioners are performing duties of Group "C" staffs. Board of Councillors of said Municipality took resolution on 28.06.2003 thereby considering financial liabilities, considered to pay Group -"C" scale of pay to the petitioners and wrote letter dated 12.08.2003 to the Directorate of Local Bodies (DLB), with request to move the government for sanction of scale of pay to the petitioners as per G.O. No. 15/C-9/MIN-3/89 dated 20.04.1982.

4. The government kept silent about the matter without assigning any reason thereto. Pursuant to an order dated 28.06.2004 issued by the Joint Secretary to the Government of West Bengal, the Chairman of Tarakeswar Municipality by his **order dated 28.08.2004 granted Group-"C" scale of pay to the petitioners with effect from 01.08.2004 without granting any arrears.**
5. As said grant of Group "C" scale of pay was not yet approved by the government, the Chairman Tarakeswar Municipality wrote a letter dated 10.01.2013 (after more than 10 years) to the DLB, requesting for "by name" approval of the petitioners.
6. **By letter dated 27.05.2013 the DLB directed recovery of excess drawl w.e.f. 13.08.2004 from the 12 employees (Including petitioners).**
7. This order was neither given any effect, nor was it communicated to the petitioners, who also got incremental benefits. By an order dated 01.11.2017, the Chairman Tarakeswar Municipality withdrew the petitioner's Group-"C" scale and refixed it in earlier Group- "D" scale of pay and also directed that the excess drawn by the petitioner would be recovered by deduction from the salary of November, 2017.
8. At the time of filing the writ petition, petitioner No. 7 retired from service. Initially provisional pension was started and after

recovery of impugned overdrawal, regular pension has been started.

9. The petitioners rely upon the following judgments:-

1) Syed Abdul Qadir & Ors. Vs. State of Bihar and Ors. ((2009) 3 SCC 475) (para 59 to 61).

2) State of Punjab & Ors. -Vs- Rafiq Masih (White Washer) and Ors. ((2015) 4 SCC 334) (para 14 to 18).

3) Jogeswar Sahoo & Ors. Vs- District Judge, Cuttack and Ors. (2025 SCC OnLine SC 724) (para-11).

10. The respondent **Tarakeswar Municipality** has filed their **report in the form of affidavit** wherein they have stated as follows:-

“Upon examination of the records, it is found that Page No. 91 of the writ petition contains Notification No. 663/DLB/Verification-1/2022 (Pt.1) dated 27.05.2013, issued by the Directorate of Local Bodies to the Chairman of Tarakeswar Municipality. The said notification emanated from an audit and verification exercise undertaken by the Directorate, which revealed that twelve employees had been drawing salaries in excess of the admissible pay scale attached to their posts. These employees had been receiving salary in the

pay scale of ₹3,350- ₹6,325 (earlier ₹300-₹685) instead of the sanctioned pay scale of ₹800-₹1,265 (earlier ₹220-₹388). It is material to note that the basic pay scale for the post of Rent Collector was originally fixed at ₹300-₹685 by Resolution No. 15/C-9/MIM-3/81 dated 20.04.1982, and was subsequently revised to ₹220-₹388 by Resolution No. 128/C-9/PIM-1/84 (Pt. II) dated 11.04.1985 of the Local Government and Urban Development Department. The Directorate, upon detecting the discrepancy, directed the Municipality to recover the excess salary drawn by the employees concerned from 2004 onwards.”

- 11.** It is further stated by the respondent Municipality that by the said resolution, the Board of Councillors of Tarakeswar Municipality, acting in faithful obedience to the directive of the Directorate dated 27.05.2013, formally resolved to accept the findings therein and to fix the pay scale for the category of employees concerned at ₹800-₹1,265 (earlier ₹220-₹388), thereby regularising the position in conformity with the prescribed statutory norms. **The earlier salary disbursements in the higher scale were made in exceptional circumstances** in which the Board of Councillors passed an order for the

increment on the Pay Scale of these 12 employees, without any ulterior object, and that once the directive of the Directorate of Local Bodies was received, the Municipality duly aligned the pay scale to the sanctioned rate.

- 12.** It is further stated that **three of the twelve employees voluntarily refunded the excess salary received by them prior to their retirement.** These employees are Shri Ballav Chandra Das, retired on 31.12.2018; Shri Tapan Chatterjee, retired on 31.05.2021; and Smt. Rakhi Roy, retired on 30.11.2022. In these cases, as the excess salary had been refunded in full, their retirement benefits were disbursed without any deduction, and they are presently in receipt of their pensions upon the Sanctioned Pay scale i.e. ₹220-₹388 by Resolution No. 128/C-9/PIM-1/84 (Pt. II) dated 11.04.1985 of the Local Government and Urban Development Department. In respect of the remaining employees, despite the binding nature of the Directorate of Local Bodies direction, recovery has not yet been effected.

- 13. Regarding such recovery, the petitioners state that:-**

Overdrawal due to alleged wrong fixation: The petitioners have not misrepresented for getting **Group-"C" scale of pay** which they have **enjoyed since August, 2004 till November, 2017** and as the same was granted in terms of Governments

order dated 28.06.2004, such benefit, once granted cannot be withdrawn subsequently, putting the petitioners in financial hardship. Recovery of the alleged overdrawal amount for aforesaid period is not permissible in view of several judgments of the Hon'ble Supreme Court of India.

14. Heard the parties in full. Perused the materials on record.
15. It appears that the Supreme Court in **Syed Abdul Qadir & Ors. v.State of Bihar & Ors. (Supra)**, the Court held as follows:-

*“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was **not because of any misrepresentation or fraud** on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. **Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.***

60. Learned counsel also submitted that prior to the interim order passed by this Court on 7-4-2003 in the special leave petitions, whereby the order of

recovery passed by the Division Bench of the High Court was stayed, some instalments/amount had already been recovered from some of the teachers. **Since we have directed that no recovery of the excess amount be made from the appellant teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.**

61. In the result, the appeals are allowed in part; the impugned judgment so far as it relates to the direction given for recovery of the amount that has been paid in excess to the appellant teachers is set aside and that part of the impugned judgment whereby it has been held by the Division Bench that the amended provisions of FR 22-C would apply to the appellant teachers is upheld. **We direct that no recovery of the excess amount, that has been paid to the teachers of secondary schools, be made, irrespective of the fact whether they have moved this Court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgment was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them within three months from the date of receipt of copy of this judgment.”**

16. In *State of Punjab & Ors. v. Rafiq Masih (White Washer) &*

***Ors., (Supra)*, the Supreme Court held:-**

“14. In this context, reference may also be made to the decision rendered by this Court in *Shyam Babu Verma v. Union of India* [*Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], wherein this Court observed as under : (SCC pp. 525-26, para 11)

“11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1-1-1973 and only after the period of 10 years, they became entitled to the pay

scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1-1-1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.”

(emphasis supplied)

It is apparent, that in Shyam Babu Verma case [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , the higher pay scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984 i.e. after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.

15. *Examining a similar proposition, this Court in B.J. Akkara v. Govt. of India [B.J. Akkara v. Govt. of India, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] observed as under : (SCC pp. 728-29, para 28)*

“28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to

recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”

(emphasis supplied)

A perusal of the aforesaid observations made by this Court in B.J. Akkara case [B.J. Akkara v. Govt. of India, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from the employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e. Class III and Class IV—sometimes denoted as Group C and Group D) of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

16. This Court in *Syed Abdul Qadir v. State of Bihar* [*Syed Abdul Qadir v. State of Bihar*, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] held as follows : (SCC pp. 491-92, para 59)

“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. The learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

(emphasis supplied)

*Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in *Syed Abdul Qadir* case [*Syed Abdul Qadir v. State of Bihar*, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] , that recovery of excess payments, made from the employees who have retired from service, or are close to their retirement, would entail extremely harsh*

consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation.

17. *Last of all, reference may be made to the decision in Sahib Ram v. Union of India [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] wherein it was concluded as under : (SCC pp. 19-20, paras 4-5)*

“4. Mr Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class MA, MSc, MCom plus a first or second class BLib Science or a Diploma in Library Science. The

relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

(emphasis supplied)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs 700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class MA, MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification). For those Librarians appointed prior to 3-12-1972, the educational qualifications were relaxed. In Sahib Ram case [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the appellants concerned were ineligible for the same. The appellants concerned were held not eligible for the higher scale, by applying the

principle of “equal pay for equal work”. This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

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.”

17. In *Jogeswar Sahoo & Ors. Vs- District Judge, Cuttack and Ors. (Supra)*, the Court was of the view:-

“11. In Col. B.J. Akkara (Retd.) v. Government of India this Court considered an identical question as under:

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide *Sahib Ram v. State of Haryana* [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], *Shyam Babu Verma v. Union of India* [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], *Union of India v. M. Bhaskar* [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and *V. Gangaram v. Regional Jt. Director* [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in

equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

12. In *Syed Abdul Qadir v. State of Bihar* excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing

Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.””

18. In the present case, the petitioners being appointed to the group 'D' category were admittedly made to perform the duties in group 'C' posts.

19. The petitioners got the benefit of higher scale of pay vide Ref No. Adm/8E-2003/2 dated 12.08.2003, but on and from 01.08.2004.

20. By an order bearing No. Adm/1E-2004 dated 28-08-2004 the Chairman of the said municipality informed all concerned that in terms of resolution dated 13-08-2004, the Rent Collectors of the municipality who were drawing salary in the scale of pay Rs. 220/- - 388/- (subsequently revised Rs. 2600/- - 4176/-) would draw salary in the scale of pay Rs. 3350/- 6325/- with effect from 01-08-2004 in terms of Government Resolution No. 15/C-9/MIM-3/81 dated 20-04-1982 and no arrear claim would be entertained. This was on the basis of an order of the Joint Secretary bearing no. 300/MA/O/C-4/1A-7/2000 dated 28.06.2004.

21. Increments were also granted to the petitioners on the said higher scale

The Chairman of Tarakeswar Municipality issued memo Ref. No. Adm/1E-2013/4 dated 10-01-2013, thereby requested the Director of Local Bodies, West Bengal to make necessary arrangement for "by name" approval of scale of pay in respect of

the petitioners along with others, who got benefit of Chairman's aforesaid Ref. No. Adm/8E-2003/2 dated 12-08-2003, which was pending for approval by the Director of Local Bodies, West Bengal.

22. The Director of Local Bodies, West Bengal then issued Memo No. 663/DLB/Verification-I/2002 (pt-1) dated 27-05-2013, thereby informed the Chairman, Tarakeswar Municipality that Government in the erstwhile L.G. & U.D. Department had prescribed the pay scale of Rs. 300/--685/- for the post of Rent Collector with effect from 01-04-1981 vide its resolution No. 15/C-9/MIM-3/81 dated 20-04-1982. Subsequently, that pay scale of the post of Rent Collector was amended as Rs. 220/--388/- vide resolution No. 128/C-9/PIM-1/84 (Pt. II) dated 11-04-1985 of L. G. & U. D. Department. Accordingly the said authority requested the Chairman of Tarakeswar Municipality to **recover the excess drawal** with effect from 13-08-2004 from the 12 (twelve) employees.

23. Thus relying upon the guidelines of the Supreme Court in ***State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors., (Supra), (Para 18)***, it appears that in the present case:-

- i. Recovery has been directed from the petitioners who belong to the group C and D service.

- ii. Excess payment has been made for a period of almost 10-14 years (in excess of five years).
- iii. In the present case also recovery has been directed from employees/petitioners who had been made to discharge duties of a higher post, though rightfully they were required to work against an inferior post.

24. As such in this case also, this Court arrives at the conclusion, that recovery if made from the employees/petitioners herein would be iniquitous, harsh and arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

25. And relying upon the judgment in ***Syed Abdul Qadir & Ors. v. State of Bihar & Ors. (Supra), (Para 61)***, it is directed that the amount that has recovered from the other employees be refunded to them to maintain parity within three months from the date of receipt of this judgment.

26. Accordingly, Memo No. 663/DLB/Verification I/2002 (pt-1) dated 27-05-2013 issued by Director of Local Bodies, West Bengal as well as Order No. Adm/1E-2017/123/641 dated 01-11-2017 issued by the Chairman, Tarakeswar Municipality, **are hereby quashed and set aside.**

27. WPA 5675 of 2018 is disposed of.

28. All connected application, if any, stands disposed of.

- 29.** Interim order, if any, stands vacated.
- 30.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]