

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 8385 of 2025

**Sibaram @ Sibram @ Shibram Bouri @ Bauri
versus
The State of West Bengal & Ors.**

For the petitioner : Mr. Sanjib Seth
Ms. Soumi Chakraborty

For the Durgapur
Municipal Corporation : Mr. Sandipan Banerjee
Ms. Purbasha Nandy Brahma

For West Bengal Housing:
Board. Mr. D. Sengupta
Mr. Ayan Chakraborty
Ms. Sohini Mukherjee

Heard on : 05.12.2025

Judgment on : 05.12.2025

Raja Basu Chowdhury, J (Oral):

1. The present writ petition has been filed, inter alia, challenging a directive issued by the Durgapur Municipal Corporation vide order dated 20th March 2025 directing the petitioner to deposit Rs.2,67,900/- which had alleged been drawn by the petitioner in excess due to erroneous fixation of his salary from 1st April 1981 to 31st July 2020.

2. It is the petitioner's case that the petitioner was employed with the service of the then Durgapur Notified Area Authority on and from 11th August 1980 as a sweeper having code no. 389. According to the petitioner his pay was revised from time to time. It is submitted from the bar that subsequently, the petitioner's service was regularized with the Durgapur Municipal Corporation and the petitioner continued to discharge his duties with the Durgapur Municipal Corporation till his superannuation which took effect from the afternoon of 31st July 2025. Such fact would corroborate from the superannuation notice dated 11th January 2020 issued by the Durgapur Municipal Corporation.
3. According to the petitioner the petitioner is entitled to pension under The West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971. Accordingly, his pension papers were forwarded by the Secretary, Durgapur Municipal Corporation to the Assistant Director, Pension, Provident Fund & Group Insurance, Finance Department, Government of West Bengal by a communication in writing dated 21st September 2020. Unfortunately, the petitioner later came to know that his pension papers had been returned on the basis of an audit observation that there had been overdrawal of his salary for which his pay was required to be recast with effect from 1st April 1981. The relevant audit observation which prompted the Assistant Director, Pension, Provident Fund & Group Insurance, Finance Department, Government of West Bengal to return the pension papers to the

Durgapur Municipal Corporation vide communication dated 3rd February 2023 is extracted hereinbelow:-

Annexure P/4
Annexure P/4
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GOVERNMENT OF WEST BENGAL
Directorate of Pension, Provident Fund & Group Insurance
Finance Department
Purta Bhavan (2nd floor), Salt Lake, Kolkata - 700 091.

K/RM/M/00091/23
Return Memo. No. /DPPG/MUN/BUR/00057/2020
Date 03.02.2023

To : The Secretary,
Durgapur Municipal Corporation
District - Paschim Bardhaman.

Ref.: Your Memo. No.3972
Dated : 28-10-2022.

The Pension case in respect of **Sri Sibrum Bauri**, Ex.Sweeper, is returned herewith along with connected papers for the reasons stated below with the request that you will kindly rectify the defects pointed out before re-submission of the same.

FILE NO.: MUN/BUR/00057/2020

AUDIT OBSERVATIONS :

Memo No.7890-F, Calcutta, dated 28-08-1980 of Finance Department, West Bengal is applicable for State Government employees only.

Memo No.15/C-9/MIM-3/81 dated Calcutta, the 20th April 1982 (Rule No.4) of Local Govt. and Urban Development Department, W.B. should be applied to Calcutta I.P.F. of ROPA-81 of the employees of the Municipalities.

Admissibility of Ad-hoc pay Rs.15/- and Interim Pay Rs.50/- (noted in Service book) in time of Calculation of I.P.F. of ROPA-81, should be reviewed with supportive G.O. Otherwise, pay should be re-cast w.e.f. 01-04-1981.

Overdrawal if any, is to be calculated and refunded accordingly before re-submission of the pension file.

20/01/23
Assistant Director
Pension, Provident Fund & Group Insurance
Government of West Bengal

4. Following the above, the municipal authorities had called upon the petitioner vide communication dated 20th March 2025 to refund a sum of Rs.2,67,900/- which was paid to the petitioner due to erroneous fixation, for the respondents to proceed further with the pension file. According to the petitioner, the aforesaid demand is illegal and the petitioner cannot be saddled with the aforesaid demand of Rs.2,67,900/- that too after his retirement.

5. The municipal authorities and the State are both represented.
6. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I notice that the petitioner had, in fact, discharged his duties to the satisfaction of his employer till his superannuation. Though, the respondents would contend that there had been overdrawal due to erroneous computation, it is not the case of the respondents that the petitioner was in any way involved in any such erroneous computation. If the respondents had paid an excess amount to the petitioner over a period of time, in my view, such amount cannot be recovered from the petitioner that too after his retirement especially when the same is likely to cause extreme hardship to the petitioner. The judgment delivered in the case of ***State of Punjab and others etc. v. Rafiq Masih (White Washer) etc.***, reported in **AIR 2015 Supreme Court 696** in no uncertain terms in paragraph 12 has observed as follows:

“12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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.”

7. Having regard to the above and the peculiar facts noted hereinabove, I find that recovery of the aforesaid amount from the petitioner would certainly cause undue hardship to the petitioner. Further, considering the fact that the petitioner had no role in the wrongful computation of his salary and consequential disbursement thereof, the recovery as aforesaid, in my view cannot be sustained. The communication dated 20th March 2025 demanding an amount of Rs.2,67,900/- from the petitioner is accordingly quashed.
8. The respondents are directed to forthwith process the petitioner's pension papers and ensure that the retiral dues of the petitioner should be disbursed to the petitioner within two weeks from the date of communication of this order, by issuing appropriate pension payment order.

9. The gratuity amount, if due, shall also be disbursed along with arrear pension within 4 weeks from the date of communication of this order.
10. It is made clear that if, the retiral dues and gratuity as directed above is not disbursed within the stipulated period, the same shall carry interest at the rate 6 per cent on the outstanding amount from the date the amount has fallen due till such time the same is actually paid.
11. With the above observations and directions, the writ petition is disposed of.
12. All parties shall act on the basis of the server copy of the order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

**Saswata
A.R. (Court)**