**IN THE HIGH COURT AT CALCUTTA**
**CIVIL APPELLATE JURISDICTION**
**APPELLATE SIDE**

**Present:-**
**The Hon'ble Justice Madhuresh Prasad**
**And**
**The Hon'ble Justice Prasenjit Biswas**

***WPST 71 of 2025***

**ARGHYA MAJUMDAR**
**Vs**
**STATE OF WEST BENGAL AND ORS.**

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| For the Petitioner | : Mr. D. N. Ray, Sr. Adv.,<br>Mr. M. N. Ray,<br>Mr. Sourav Haldar. |
| For the State | : Mr. Tapan Kumar Mukherjee, Ld. AGP,<br>Ms. Sangeeta Roy. |
| For the Respondent No. 3 | : Mr. Indranil Nandi,<br>Mr. Sayak Konar. |
| Judgment on | : March 25, 2026. |

**Madhuresh Prasad, J**

1. The writ petitioner was the applicant before the West Bengal Administrative Tribunal (for short 'Tribunal').

2. The applicant was working as a Lower Division Assistant in the office of the Official Receiver, High Court at Calcutta since his appointment as such vide an appointment letter dated 04.12.2009. Thereafter he was temporarily promoted as Supervisor of Estate, by the Official Receiver under letter dated 23.04.2015, but with effect from

01.09.2014. By an office note and order dated 19.05.2022 the applicant was directed to step down from his promotional post since the promotion was given based on a wrong implementation of the judicial department's order No. 30 dated 09.01.2012. The petitioner was directed to deposit the amount of salary overdrawn as a result thereof.

3. Under the circumstance, the writ petitioner moved the Tribunal by filing O.A. No. 688 of 2022, for the following relief:

> *"(a) An order do issue directing the concerned respondent authorities not to deduct the alleged overdrawn amount from salary of your applicant on month to month basis, total amounting to Rs. 69,707/- (Rupees Sixty Nine Thousand Seven Hundred and Seven Only) and further direction to refund back the deducted amount in favour of your applicant with immediate effect and that too without any further delay.*
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> *(b) An order do issue thereby directing the respondent authorities to refund back the amount already deducted from the salary of the applicant towards alleged overdrawn amount alongwith interest @ 6% per annum till the actual date of realization of the same.*
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> *(c) An order do issue thereby holding the order of promotion in favour of your applicant to the post of Supervisor of Estate from Lower Division Assistant vide office order dated 23.04.2015 with effect from 01.09.2014 not to be a "Erroneous" one.*
>
> *(d) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant and in the ends of justice."*

4. The Tribunal considered the petitioner's claim the provisions contained in the ROPA Rule 1981 and the consequent fixation of the status of the various posts including the post substantially held by

the writ petitioner. The Tribunal found the petitioner's reversion to be in accordance with the extant policy/ rules. The Tribunal also noted that the petitioner was the junior most incumbent and holding the post of Supervisor of Estate, only on a temporary basis in light of the promotion order dated 23.04.2015.

5. The Tribunal rejected the petitioner's claim seeking a restrain on recovery of the difference amount of salary paid to him as a result of the undue promotion. The order of the Tribunal dated 29.01.2025 passed in O.A. No. 688 of 2022 is put to challenge in the present writ proceeding.

6. It is submitted by the learned senior advocate appearing for the petitioner that the Tribunal failed to consider that the petitioner's redesignation and promotion was cancelled on account of a decision taken by the Finance Department on 06.08.2021. The same contemplates an approval by the Cabinet, which was never obtained. The decision also did not contemplate any retrospective effect. Therefore, there was no scope for issuing the impugned order dated 19.05.2022 by the Official Receiver. It is submitted that the petitioner was promoted as a Supervisor of Estate w.e.f. 01.09.2014 by the authorities on their own misreading of the Government's policy approved by the Finance Department on 21.12.2011. The petitioner did not make any misrepresentation or suppression so as to obtain promotion w.e.f. 01.09.2014. The date of petitioner's promotion was shifted from 01.09.2014 to 01.09.2015. Therefore, petitioner received the excess pay for a one year period only between 01.09.2014 to

01.09.2015. He, therefore, submits that there is no justification for making recovery of the excess amount received by the petitioner on the redesignated post (Estate Supervisor), over and above the pay attached to the post (Lower Division Assistant), he was substantially holding.

7. The learned advocate/s appearing for the State as well as the respondent no.3/Official receiver submits that the Government's order dated 06.08.2021 contemplated ratification of the staffing pattern w.e.f. 01.08.2008. The issue decided by the order dated 06.08.2021 does not require approval of the Cabinet as per the Rules of the executive business. It is further submitted that in view of a communication dated 02.09.2021 from the Deputy Secretary in the Judicial Department, to the Office of the Official Receiver, the Official Receiver was under an obligation to make recovery of the overdrawn salary by the petitioner. The petitioner is a Group B employee and he has not yet retired from service.

8. Therefore, it is submitted that the finding of the Tribunal that decision of the Apex Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334*** has no application is correct. The benefit was granted only for a period of one year. Recovery, therefore, would not bring about an onerous situation as contemplated by the judgment in the case of ***Rafiq Masih*** (supra), so as to justify passing of orders restraining the authorities from making the recovery.

9. He has also drawn attention of the court towards communication made from other similarly situated persons as the present applicant/writ petitioner, whereby and whereunder they have voluntarily refunded the excess amount drawn by them, as a result, of the same undue promotion granted to them on the post of Estate Supervisor.

10. We find that the petitioner did not assail the Finance Department decision dated 06.08.2021, the Judicial Department communication dated 02.09.2021, or the order dated 09.05.2022 shifting his date of promotion from 01.09.2014 to 01.09.2015. He has not made any submission to justify grant of the promotion in question with effect from 01.09.2014. The substance of his submissions are to the effect that the promotion was granted with an undue date by the authorities based on their own misreading of the relevant provisions, and that the petitioner was not responsible of any suppression or misreading for having avail undue promotional benefit. The learned Senior Advocate for the writ petitioner has also not shown any provision in the Rules of Executive Business requiring the Cabinet's approval before correcting the due date of petitioner's promotion as an Estate supervisor.

11. We therefore, proceeded to consider the petitioner's grievance being the consequential recovery of the salary of the promoted post, which the petitioner has received for a one year period only. Before the tribunal the applicant/petitioner relied upon decision of the Apex Court in the case of ***Rafiq Masih*** (*supra*). The tribunal having noted

the decision did not record any consideration in this regard. The tribunal said that the petitioner's case is not covered by the judgment in the case of ***Rafiq Masih*** (supra). The Tribunal was not satisfied that recovery was onerous.

12. We find that the Tribunal recorded such a conclusion without discussing the judgment with reference to the petitioner's claim. We thus proceeded to consider the petitioner's claim with reference to the judgment of the Apex Court in the case of ***Rafiq Masih*** (supra).

13. Paragraph 18 of the decision in the case of ***Rafiq Masih*** (supra) delineates some of the circumstances in which recovery may be considered to be an onerous one, in the following terms:

> *"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:*
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> *(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."*

14. A reading of the judgment leaves no ambiguity as to the circumstances under which the Court should interfere with the recovery sought to be made on the ground of such recovery being an onerous recovery.

15. In the instant case the petitioner is neither an employee belonging to Class III or Class IV, nor the recovery is intended at a time when he is due to retire. As a result of shifting of the date of petitioner's promotion as Estate Supervisor for a period of 1 year the resultant recovery in terms of the Government's decision is of the differential pay between the petitioner's substantive post and the promoted post, received only for a period of one year. We further found that the promotion was granted by an order dated 23.04.2015 with retrospective effect i.e. from 01.09.2014.

16. For the above noted reasons we find that the petitioner's case is not factually covered by the four circumstances deemed onerous or for any other such circumstance, in terms of paragraph 18 of the Apex Court judgment in the case of ***Rafiq Masih*** (supra).

17. Insofar as the submission regarding Cabinet approval not obtained prior to a decision for recovering the amount, we find no force in such submission, which has not been supported by any provision in the Rules of executive business requiring such prior approval from the Cabinet to make recovery from an employee on the

petitioner's post in Group-B service. We have also noticed above that the petitioner did not put to challenge the Finance Department decision dated 06.08.2021 or the Judicial Department communication dated 02.09.2021, which is the basis for the recovery order dated 09.05.2022. The order dated 09.05.2022 has also not been challenged by the petitioner in specific terms in his original application.

18. The petitioner failed to challenge the base decision/ communication forming the basis of the recovery. Neither any prayer was made in this regard nor any assertions have been made in the original application to sustain an allegation regarding the base decisions being legally unsustainable. In absence of challenge to the base decision and communication we find no scope for the petitioner to raise an issue regarding the consequential recovery order, or its effect. The law in this regard is also by now well settled by a decision of the Hon'ble Supreme Court of India in the case of ***Edukanti Kistamma (Dead) through LRS. And Ors. Vs. Venkatareddy (Dead) through LRS. And Ors.*** reported in ***(2010) 1 SCC 756*** that in absence of challenge to a basic order, the consequential orders/ decisions cannot be assailed.

19. There is also no dispute that the others similarly situated as the petitioner who were wrongly given the benefit of promotion have also been subjected to such recovery, which they have accepted without any objection whatsoever. On this ground also the petitioner is not entitled to the relief for which he approached the Tribunal.

20. Having given our anxious consideration to the petitioner's claim with reference to the decision relied upon we are also of the view that the petitioner could not made out any case for passing any order restraining recovery from the petitioner pursuant to the decision dated 09.05.2022.

21. The writ petition is dismissed.

22. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

**(Madhuresh Prasad, J.)**

I agree.

**(Prasenjit Biswas, J.)**