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jdt. **06.05.2026**
jb.

WPA 10052 of 2026
(Somenath Kumar vs. State of West Bengal & Ors.)

Ms. Sanchayita De
.... For the Petitioner
Mr. Milan Kumar Maity
.... For the State

Affidavit of service filed on behalf of the petitioner is taken on record.

None appears for the respondents despite service.

Mr. Milan Kr. Maity, learned counsel who is present in Court and usually appears for the State is requested to represent the State in this matter. His appointment be regularised by the appropriate authority. The petitioner is directed to serve copy of the application along with annexure thereto upon Mr. Maity in course of this day.

Heard learned counsels for the parties.

The petitioner was appointed as Nirman Sahayak of Ichag Gram Panchayat and superannuated on 30th November, 2021. The petitioner was granted periodical increments and his scale of pay was revised and fixed from time to time in terms of the relevant Government Orders/Rules and approved by the competent authority. After retirement of the petitioner his pension papers were withheld and on enquiry, the petitioner learnt that an amount of Rs. 1,53,435/- was overdrawn by him due to clerical mistake. Accordingly, the petitioner deposited the overdrawn amount of Rs. 1,53,435/- through treasury challan on 24th May, 2022. The petitioner seeks refund of the said amount.

Learned counsel for the petitioner placed reliance on the authorities in ***Shyam Babu Verma & Ors. vs. Union of India & Ors.*** reported in ***(1994) 2 SCC 521, Union of India vs. Tarsem Singh*** reported in ***(2008) 8 SCC 648*** and ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors*** reported in ***(2015)4 SCC 334*** in support of his contention.

Paragraph18 of the authority in Rafiq Masih (supra) is set out for the purpose of better understanding of the issue.

> "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 II and Class IV service (or Group C and Group D service).
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> (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
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> (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 view of the said proposition of law, this Court is inclined to hold that the concerned authority could not have directed the petitioner to deposit the overdrawn amount. The petitioner is entitled to the relief as prayed for.

Upon consideration of the submission made on behalf of the parties the writ petition is disposed of directing the 3rd and 4th respondents to release the amount of Rs. 1,53,435/- along with interest thereon at the rate of 8% per annum in favour of the petitioner from 1st December, 2021 till the date of payment of the amount. The entire amount shall be refunded within two months from the date of communication of this order.

The writ petition is accordingly disposed of.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities

(Suvra Ghosh, J.)