

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 10758 of 2024

**Bimal Kumar Chaudhury
versus
Durgapur Municipal Corporation & Ors.**

For the petitioner	:	Mr. Dilip Kumar Moitra
For the DMC	:	Mr. Sandipan Banerjee Ms. Utsha Dutta
For the State	:	Mr. Prodip Paul @ Pradip Paul
Heard on	:	24.02.2026
Judgment on	:	24.02.2026

Raja Basu Chowdhury, J (Oral):

1. The matter pertains to a challenge to an undated order passed by the Special Secretary, Government of West Bengal pursuant to the directions passed by the Division Bench of this Court dated 29th September, 2022 in MAT 1158 of 2019. It appears that by the above order, the matter was referred to the finance department for their concurrence and accordingly, the Durgapur Municipal Corporation (in short DMC) was directed to abstain from deducting payment from the pensionary benefits of the petitioner on the basis of the revised pay scale.

2. The writ petition has, however, a checkered history. The petitioner was initially appointed as the Secretary of the Durgapur Notified Area presently known as Durgapur Municipal Corporation (in short "DMC"). Records would reveal that by an office order dated 18th October, 1996, the petitioner was re-designated as education officer of the DMC. The office order further mentioned that the terms and conditions of the original appointment of the petitioner would remain the same. Subsequently, the petitioner retired from service as education officer of the DMC on his superannuation on 31st May, 2006.
3. By memo dated 28th February, 2008 the Joint Secretary, Government of West Bengal had written to the Secretary, DMC as follows:

"With reference to your Memo. No. DMC/G/2111(En) dated 19.07.2007 on the subject cited above and to say that the pay scale of Shri Chowdhury would be fixed at the initial stage of Rs. 440/-1170/- in the post of Secretary, Durgapur Municipal Corporation on 17.05.2005 i.e., the date of his appointment. So, the Authority may be requested to fix his pay accordingly. The amount overdrawn by Shri Chowdhury should be recovered from his gratuity as he retired from his service on 31.05.2006 on superannuation and if gratuity has meanwhile been paid, the overdrawn amount may be recovered from his relief on pension. This is issued with the concurrence to Finance Department's U.O. No. 2934 Group P(pay) dated 22.02.2008."

“7. Subsequently DMC issued a memo dated 14-1-2010 which was to the following effect:-

"The Director of Pension, Provident Fund and Group Insurance, Govt. of West Bengal has sanctioned final pension as provided in Rule 30 of amended Pre-2006 D.C.R.B Rules and 93/MA/O/C/5/IR-1/98, dt. 17/02/99 which is subsequently revised and read with Memorandum No. 230/MA/O/C-9/2P-6/2009, dt. 9th June, 2009; 231/MA/O/C-9/2P-6/2009, dt. 09th June, 2009 & 232/MA/O/C-9/2P-6/2009, dt. 09th June, 2009. Sri Bimal Kumar Chowdhury, Ex-Education Officer, Durgapur Municipal Corporation is entitled to get final pension with effect from his date of superannuation i.e. 01.06.2006; P.P.O. No & rate of pension are furnished below.

<i>Sl. No.</i>	<i>Name of the Pensioner</i>	<i>P.P.O No & Date</i>	<i>Rate of Pension</i>	<i>With effect from</i>
<i>01</i>	<i>Sri Bimal Kumar Chowdhury, Ex-Education Officer, DMC</i>	<i>MUN/M/BUR/00002/2010, Dt. 07/01/2010</i>	<i>Rs.2618.00</i>	<i>01-06-2006</i>
			<i>Rs.6125.00</i>	<i>01-04-2008</i>

The gratuity amount as entitled of Rs. 2,02,440/- will be adjusted with the overdrawal amount of Rs. 5,52,811/- and the balance amount of Rs. 3,50,371/ will be adjusted with the admissible relief payable to him w.e.f. 01.06.2006 as mentioned in the P.P.O.”

4. Subsequently, a pension payment order was issued in favour of the petitioner reflecting a deduction of Rs. 5,51,771/- on account of

alleged overdrawn amount upon taking into account the re-fixation of the petitioner's scale of pay. Being aggrieved with the above, and the failure of the authorities to consider his representation against the aforesaid deduction and re-fixation of pay, the petitioner approached this Court in WPA 7578(w) of 2014. A Co-ordinate Bench of this Court had allowed such writ petition. Being aggrieved by such order, the DMC had preferred an appeal which was registered as MAT 1158 of 2019. Record would reveal that the order passed by the learned Single Judge was set aside and the matter was remanded back to the learned Single Judge. Thereafter by an order dated 6th March, 2017, time was granted by the learned single Judge to the respondents to file affidavit-in-opposition. No affidavit was filed despite obtaining the extension. Accordingly, on 11th July, 2019 when the matter was taken up for consideration by the learned Single Judge, it was submitted on behalf of the DMC that because of change in the panel of advocates, the affidavit could not be filed but was lying ready and affirmed. The learned Judge rejected the DMC's prayer for leave to file affidavit-in-opposition. The Learned Judge by the above order dated 11th July, 2019 allowed the writ petition by setting aside the re-fixation of the petitioner's scale of pay and the consequential deduction from his retirement on account of alleged overdraw being made. Being aggrieved the DMC once again preferred an appeal which was registered as MAT 1158 of 2019.

5. The said appeal was disposed of by the Division Bench of this Court by order dated 29th September, 2022 by taking note amongst other judgments, the Judgment delivered in the case of State of Punjab & ors. v. Rafiq Masih (White Washer) reported in AIR 2015 SC 696 and by, inter alia, observing as follows:

“In the case of Rafiq Masih after reviewing all the previous decisions of the Supreme Court on this aspect, including the decision of the three Judge Bench in State of Punjab v. Rafiq Masih, delivered on July, 2014, on a reference made by a Division Bench of the Supreme Court in view of apparent contradictions between the decisions in Shyam Babu Verma & Ors. and Sahib Ram Verma on one hand and Chandi Prasad Uniyal & Ors. v. State of Uttarakhand & Ors., reported at (2012) 8 SCC 417, on the other hand, the Supreme Court held that the benefit of not being obliged to refund excess payment cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation on the part of the employee. The Hon'ble Court laid down parameters of the fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employee, may not be compelled to refund the same. At paragraph 12 of the judgment the Hon'ble Supreme Court held as follows:-

"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 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.*
- (ii) 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.*

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."

The instant case is covered by the second category of employees mentioned under paragraph 12 of the judgment in Rafiq Masih. Hence, no recovery of overdrawn amount from the writ petitioner/respondent is permissible.

In so far as the fixation of pay scale to correct the error is concerned, we are of the view that even if the same is permissible after retirement of the concerned employee, principles of natural justice warrant that an opportunity of hearing should be given to the concerned employee before such a decision is taken, particularly when the scale of pay is being reduced. Such a step would have obvious adverse consequences for the employee and hence he ought to be heard before such an order is issued

In view of the aforesaid the order re-fixing the scale of pay of the respondent/writ petitioner as well as the order for recovery of overdrawn amount/excess payment are set aside. If recovery of such amount has already been made from the writ petitioner, the same shall be refunded forthwith to him, in any event within a period of 4 weeks from date, with interest at the simple rate of 8% per

annum from the date of recovery till the date of repayment.

The concerned authority shall grant an opportunity of hearing to the writ petitioner on the issue of re-fixation of his scale of pay and take a fresh reasoned decision in the matter in accordance with law. Such hearing will be fixed within six weeks from date after giving at least one week's notice to the writ petitioner who will be entitled to urge all points before the competent Authority as to why his scale of pay should not be reduced. The reasoned decision will be taken by the Competent Authority within three weeks from the date of hearing and will be communicated to the writ petitioner within a week thereafter. Till the completion of such exercise, the writ petitioner will be entitled to draw pensionary benefits on the basis of the scale of pay that he enjoyed as on the date of his retirement.

The appeal and the connected application are disposed of accordingly without any order as to costs.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.”

6. Pursuant to the aforesaid, the Deputy Secretary, Government of West Bengal by cover up letter dated 20th March, 2023 had forwarded the undated order issued by the Special Secretary, Government of West Bengal to the Commissioner, DMC. It appears that in the above order, the Special Secretary has, inter alia, observed as follows:

“On examination of the available documents, it may be stated that-

1. The Executive Officer, Durgapur Notified Area Authority has published an advertisement for the post of Secretary: Rs. 500-20-540-25-640-30-820-40-1260-50-1320 plus other allowances as admissible to the employees of Durgapur Notified Area Authority

Qualification is Law Graduate with minimum 5 years experience in any supervisory post of Govt./Semi Govt./Municipal Administration.

Age: Below 45 years. Upper age limit is relax-able in case of exceptionally qualified and experienced candidates.

2. The appellant was an in-service Candidate. Prior to joining to the Post of Secretary, Durgapur Notified Area Authority/ (presently Durgapur Municipal Corporation) he was appointed to the post of Accountant-cum-Administrative Officer, Bhagirathi Milk Producers' Union Ltd.

3. The then Durgapur Notified Area Authority/ (presently Durgapur Municipal Corporation) appointed him in the post of Secretary and his initial basic pay was fixed at Rs. 980/-p.m. in the scale of pay Rs. 650/-Rs.1100/- on presentation/submission of Last Pay Certificate issued by Bhagirathi Milk Producers' Union Ltd where he had been appointed to the post of Accountant-Cum-Administrative Officer prior joining to the post of Secretary under Durgapur Notified Area Authority/ (presently Durgapur Municipal Corporation) giving him pay protection.

4. When the said post of Secretary was encadred from WBCS(Exe.), the appellant was posted as Education Officer in the same terms and conditions of his original appointment vide Order No. DMC/G/2534/5 dated 18.10.1996 issued by Durgapur Municipal Corporation.

In view of the above and on examination of the submission of appellant, the submission of Durgapur Municipal Corporation, Director of Local Bodies, it is hereby decided to refer the matter to Finance Department, Government of West Bengal for their concurrence. Until the concurrence/ views of Finance Department is received, Durgapur Municipal Corporation is directed to abstain from deducting payment from pensionary benefits of the petitioner and the appellant be paid pensionary benefits on the basis of the scale of pay that he enjoyed as on the date of his retirement.

The matter is thus disposed of.

All concerned be informed accordingly.”

7. It is unfortunate that despite the direction dated 3rd September, 2024, neither the State nor the municipality has filed any affidavit-in-opposition. Today at the time of call, Mr. Banerjee, learned advocate representing municipality would submit that the municipality has nothing to say in the matter. He only submits that pursuant to the aforesaid order, the municipality had stopped deducting from the pensionary benefits payable to the petitioner.
8. I, however, find that the Division Bench of this Court by the above order dated 29th September, 2022 had set aside the re-fixation of scale of pay of the petitioner as well as the order of overdrawn amount/excess payment. It was further provided in the order as noted above, the recovery of such amount already made from the petitioner, shall be refunded to him forthwith, in any event within a period of 4 weeks from date, with simple interest at the rate of 8% per annum from the date of recovery till the date of repayment.
9. The learned advocate for the petitioner would, however, candidly submit that consequent upon the aforesaid order being passed by the Division Bench, the respondents have refunded the entire amount recovered from the petitioner along with interest and nothing remains due on such account. Insofar as the re-fixation of salary is concerned, the same is yet to be done. Accordingly, I direct the Secretary, Finance Department, Government of West Bengal to forthwith act in accordance with the directive issued by the Division Bench of this Court in MAT 1158 of 2019 dated 29th

September, 2022 and the order passed by the Special Secretary to the Government of West Bengal which was forwarded to the parties by cover up letter dated 20th March, 2023 issued by the Deputy Secretary, Government of West Bengal.

10. In the light of the above direction, I am of the view that no fruitful purpose would be served by keeping the writ petition pending. Accordingly, the finance department is directed to complete the aforesaid process within a period of 8 weeks from the date of communication of this order. All consequences shall follow in terms of the order dated 29th September, 2022 passed by the Hon'ble Division Bench.
11. With the above observations and directions, the writ petition is disposed of.
12. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

**Sayandeep
A.R. (Court)**