

M.A.T. 740 of 2021

**Ujjal Kumar Chakraborty, since deceased,
represented by Bula Chakraborty & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Manas Kumar Ghosh,
Ms. Susmita Dey (Basu),
Mr. Antarik Dawn,
...for the Appellants/Writ Petitioners.
Mr. Suddhadev Adak,
...for the W.B.S.M.I.C.L.

1. Heard learned advocate for the appellants and the learned advocate representing the respondents.
2. The petitioner was granted benefit of MCAS to which he was not entitled, having availed the benefit of CAS.
3. In view of such consideration, the amount paid as MCAS benefit was recovered from the petitioner. The amount recovered was Rs. 74,788/- as per the stand of the respondents.
4. The petitioner approached the Writ Court raising an objection regarding such recovery being made two years after his retirement.
5. The respondents resisted the petitioner's claim relying upon the fact that the grant was conditional and subject to recovery, in the event the payment was found to be not in accordance with petitioners' entitlement.
6. The learned advocate for the writ petitioners/appellants has relied upon a decision of the Apex Court in the case of **State of Punjab**

Ors. Vs. Rafiq Masih (white washer) and Ors. Reported in (2015) 4 SCC 334. It is submitted that the Apex Court with reference to several earlier judgments has laid down the law in this regard that in case of the recovery causing an extreme hardship the same should not be permitted.

7. The learned advocate further submitted that nearly 150 persons in the Corporation were similarly situated as the petitioner.
8. The learned advocate has handed over copy of the decision of the Single Judge Bench in the case of **Chitra Chatterjee (Sinha) Vs. State of West Bengal & Ors. In W.P.A 1561 of 2019.** The decision in the case of **Prodosh Kumar Kundu (supra)** wherein the direction of the learned Single Judge to refund the amount to the writ petitioner was upheld even by the Division Bench in MAT 750 of 2022.
9. We find from perusal of the decision in the case of **Chitra Chatterjee (Sinha) (Supra)** that the petitioner therein was extended the same relief relying upon another similar order passed in **W.P.A 15863(W) of 2019.**
10. Apparently the same issue has been considered with reference to other employees of the same Corporation wherein relying upon the legal position emerging from the decision of the Apex

Court in the case of ***Rafiq Masih (white washer)*** (***supra***), this Court found the recovery to be unsustainable and directed for refund of the amount. We find the writ petitioner's case covered by the decision/s relied upon.

11. We are further of the view that order of the Division Bench in M.A.T 750 of 2022 being a decision of the Co-ordinate Bench is binding on this Court.
12. We, therefore, direct that the amount recovered from the petitioner's retiral dues be refunded to the writ petitioners within a period of four weeks from the date of receipt/production of a copy of this order before the respondent authority.
13. At this juncture, the learned advocate for the writ petitioners submitted that in the other cases the Court has allowed some interests.
14. The submission is objected to by the learned advocate for the respondents/corporation. We, however, find that some interest has been granted in the case of other similarly situated.
15. We, therefore, grant the petitioners 6% simple interest from the date of recovery till the date of payment/refund.
16. The payments are required to be made along with the chart showing the details of calculation of the amount arrived at, being refunded, for the sake of transparency.

17. The appeal is accordingly disposed of.
18. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)