IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Sudip Deb

WPA No. 4028 of 2018

Smt. Aparna Ghosh
-Vs-
State of West Bengal & Ors.

For the Petitioner : Ms. Susmita Dey (Basu)
Mr. Kaustav Ghosh
Mr. Antarik Dawn

Heard on : 20.11.2026

Judgment on : 27.11.2026

Sudip Deb, J.:-

1. The substituted petitioner is represented. Despite service, the respondents have not appeared.
2. The instant writ petition has been filed by the original petitioner for recovery of overpayment deducted from his terminal benefits with ten per cent interest accrued thereon. This apart, a prayer has also been made for setting aside the impugned order dated 27th December, 2017 passed by the respondent no. 4 herein. By the said order the respondent no. 4 herein rejected the prayer of the original petitioner to pay a sum of Rs.1,51,373/- on account of gratuity which had been deducted for overpayment.

3. It appears from the record that by an order dated 15th May, 2018, direction was given by a Co-ordinate Bench of this Court for filing affidavits but despite such direction no affidavit-in-opposition has been filed by the respondents. It further appears from the record that the original petitioner had passed away on 4th July, 2022 and pursuant thereto, an application being CAN No. 1 of 2022 had been filed to substitute the name of the original petitioner's wife, namely, Smt. Aparna Ghosh in place and stead of the original petitioner, namely, Sri Sunit Kumar Ghosh. Thereafter, pursuant to a direction passed by a Co-ordinate Bench of this Court the name of Smt. Aparna Ghosh has been substituted in place and instead of the original petitioner, namely, Sri Sunit Kumar Ghosh, since deceased.

4. Learned counsel for the substituted petitioner submitted that the original petitioner upon being superannuated was entitled to the gratuity which the respondent nos. 2 to 4 had unreasonably withheld. It is also submitted that despite an order of this Court passed on 8th September, 2017, the said respondents wrongfully and illegally failed and neglected to pay the gratuity to the original petitioner. It is submitted that the total sanction of gratuity to the original petitioner was Rs.9,82,073/- but only a sum of Rs.8,30,700/- had been paid to the original petitioner. As such, it is argued that a balance sum of Rs.1,51,373/- is still due and payable to the original petitioner by the said respondents but the same has not been paid despite several representations and even after passing of the order by a Co-ordinate Bench of this Court.

5. It is further submitted that the order dated 27th December, 2017 passed by the respondent no. 4 herein cannot be sustained in law. It is also submitted that the reasons given in the said order while refusing to refund the overpayment on account of the original petitioner's claim of gratuity is contrary to law and the same should be set aside and/or quashed. In support of such contention, the learned counsel has relied on a decision of the Hon'ble Supreme Court in the matter of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** reported in ***(2015) 4 SCC 334*** and an unreported decision of a Co-ordinate Bench of this Court in the matter of ***Sri Amit Kumar Ghosh vs. State of West Bengal & Ors. (WPA 21988 of 2019)***. Referring to the five conditions laid down in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** (Supra), it is argued that condition numbers 2 and 3 clearly apply in the instant case.
6. It is also argued that apart from the said sum of Rs.1,51,373/-, the original petitioner is also entitled to interest for such delayed payment. It is further argued that the payment of gratuity cannot be withheld and it is the duty of the employer to pay gratuity to the employee upon superannuation. In support of such contention, the learned counsel for the substituted petitioner has referred to section 4 of the Payment of Gratuity Act, 1972. It is argued that the substituted petitioner is the sole legal heir of Sri Sunit Kumar Ghosh, since deceased (original petitioner) and her name has been registered as nominee and after the death of the original petitioner, payment should be made to her.
7. Heard the counsel for the substituted petitioner and perused the record.

8. In order to decide the issue of payment of gratuity along with the original petitioner's claim of interest, it is important to ascertain the facts of the instant case which are narrated hereinbelow:-

(a) The original petitioner was appointed as a Lower Division Clerk by Calcutta State Transport Corporation (the respondent no. 2 herein) on 7th October, 1974. During the entire service life there was no allegation against the original petitioner and the entire service career was totally unblemished.

(b) The original petitioner attained the age of superannuation on 30th September, 2016, while serving as Administrative & Personnel Officer, Garia Depot.

(c) To that effect a final superannuation notice was issued to the original petitioner on behalf of the respondent no. 2 on 22nd April, 2016.

(d) After retirement, the original petitioner was entitled to receive Provident Fund as also the other post retiral benefits including gratuity. Though the other payments had been made to the full satisfaction of the original petitioner but the entire gratuity had not been paid. The original petitioner was entitled to a sum of Rs.9,82,073/- on account of gratuity but only a sum of Rs.8,30,700/- had been paid to the original petitioner. Therefore, a sum of Rs.1,51,373/- is still due and payable to the substituted petitioner being the only legal representative of the original petitioner on account of gratuity. The said fact would be evident from a sanction of gratuity dated 16th January, 2017, which has been annexed with the writ

petition. It would also be evident from the said document that such amount had not been paid on account of overpayment having been made to the original petitioner.

(e) Since the balance amount of gratuity had not been paid, the original petitioner made a representation to the respondent no. 4 on 15th December, 2016, requesting the respondent no. 4 to pay the balance amount of Rs.1,51,373/- which was due and payable on account of gratuity to the original petitioner. Despite receiving such representation, the respondent no. 4 did not pay the said amount which compelled the original petitioner to make another representation dated 1st March, 2017, addressed to the respondent no. 4 yet again making the same request. Even after receiving the said representation, the respondent no. 4 wrongfully and illegally failed and neglected to make such payment to the original petitioner. This compelled the original petitioner to file a writ petition being WP 2073(W)/2017 before this Court against the respondents seeking payment of gratuity and a Co-ordinate Bench of this Court on 8th September, 2017 after hearing the parties had passed an order, inter alia, directing the respondent no. 4 to consider and dispose of the representation made by the original petitioner dated 1st March, 2017, within a period of ten weeks from the date of communication of the said order. The respondent no. 4 was also directed to call for the records and if there was any delayed disbursement of the retiral dues for a few months, he was directed to pass necessary and consequential orders for payment of interest at the rate of ten per cent

per annum on the gratuity from the date after the expiry of thirty days from the date of retirement till the date of actual payment and at the rate of seven per cent per annum on non-gratuity retiral dues from the date next to the retirement of the original petitioner till the date of actual payment. It was also observed that respondent no. 4 was not required to give any personal hearing to the original petitioner in this regard.

(f) After the said order, the respondent no. 4 had passed the order dated 27th December, 2017 rejecting the original petitioner's claim for the gratuity on account of overpayment of Rs.1,51,373/-.

(g) Relating to the original petitioner's claim of interest, specific observations had been made for payment.

9. Being aggrieved by the said order relating to non-payment of Rs.1,51,373/- on account of gratuity, the instant writ petition has been filed.

10. This is an admitted position that the original petitioner had an unblemished service career and there was no allegation against the original petitioner at any point of time during his entire service career.

11. This is also an admitted position that a sum of Rs.1,51,373/- is still due and payable to the original petitioner and the same would be evident from the sanction of gratuity dated 16th January, 2017. However, the said amount has not been paid on account of overpayment as would be evident from the order dated 27th December, 2017, passed by the respondent no.4.

12. Thus, the question that falls for consideration is whether the respondents can at all withhold any amount on account of gratuity on the ground of overpayment.

13. The law is well settled in this regard. The Hon'ble Supreme Court in the matter of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others (supra)*** has categorically laid down the law and the same is quoted hereinbelow:-

> *"**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. The Hon'ble Supreme Court has categorically held that even if the payments have mistakenly been made by the employer in excess of their entitlement, no recovery can be made from the employees belonging to Class-3 and Class-4 service or (Group-C and Group-D service). The Hon'ble Supreme Court has also held that the recovery by the employers would be impermissible in law from the retired employees or the employees who are due to retire within one year of the order of recovery. This apart, it has also been held that the recovery by the employer would be impermissible when the excess payment has been made for a period in excess of five years before the order of recovery is issued. It has further been held that the recoveries by the employers would be impermissible in law 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.

15. In the case of ***Sri Amit Kumar Ghosh vs. State of West Bengal & Ors. (supra)*** the Co-ordinate Bench of this Court has also held that the overpayment cannot be adjusted with the gratuity amount and directed the authority to refund the overdrawn amount along with interest to the petitioner.

16. This Court finds from the impugned order that it has been recorded the original petitioner had overdrawn money from time to time. Firstly, it was done from September, 1997 to November, 2004, secondly, from December, 2004 to May, 2011, thirdly, from June, 2011 to August, 2012 and fourthly, from September, 2012 to September, 2016 totaling a sum of

Rs.1,51,373/-. Therefore, the entire amount of Rs.1,51,373/- cannot automatically be brought under condition no.3 as laid down in the case of ***State of Punjab and Others vs. Rafiq Masih*** (supra) without examining the underlying calculation and the dates of the individual payments.

17. This Court is of the view that out of the five conditions which have been laid down in the case of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others (supra),*** the condition no. 2 clearly applies in this case for the reasons stated hereinafter. In the instant case the order of recovery had been made on 16th January, 2017 while sanctioning the gratuity under the Payment of Gratuity Act, 1972 and the original petitioner retired on 30th September, 2016. There is no other contemporaneous document disclosed in this proceeding wherefrom it would be evident that there was any prior order of recovery before one year from the date of retirement. Therefore, undoubtedly the order of recovery had been made after the retirement of the original petitioner and accordingly, the condition no.2 clearly attracts. In any event, in view of condition no. 5 the Court also has ample power to pass necessary order for payment of gratuity in the event the Court arrives at the conclusion that recovery 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. Here, from the averments made in the writ petition, it appears that the original petitioner's family was fully dependent on the original petitioner's salary and the original petitioner's younger sister was also wholly dependent on the original petitioner and she had also been suffering from a terminal illness. Therefore,

undoubtedly deduction of gratuity on account of overpayment had caused hardship to the original petitioner and the recovery made by the employer is iniquitous and the same needs to be overturned by passing appropriate orders directing the respondents to pay the said sum of Rs.1,51,373/- along with interest to the substituted petitioner being the sole legal heir of the original petitioner.

18. This apart, from a conjoint reading of section 4(6) of the Payment of Gratuity Act, 1972, it appears that unless an employee comes under the provisions of section 4(6) of the said Act, no amount can be withheld/deducted from the gratuity payable to the retired employee. Admittedly, in the instant case, the original petitioner did not come within the four corners of section 4(6) of the Payment of Gratuity Act, 1972 as there was no evidence that the original petitioner had been terminated for any act, willful omission or negligence causing any damage or loss or destruction of property belonging to his employer. Therefore, the bar under Section 4(6) of the said Act does not apply here.

19. In view of the foregoing, this Court is of the view that the respondent authorities cannot deduct any amount from gratuity on account of overpayment. The respondent authorities ought to have paid the sum of Rs.1,51,373/- to the original petitioner on account of gratuity. The action of the respondent authorities is contrary to law. Accordingly, the order dated 27th December, 2017 cannot be sustained in law and the same is set aside.

20. The respondent no. 2/Calcutta State Transport Corporation shall pay the said sum of Rs.1,51,373/- along with interest @ six per cent per annum

to the substituted petitioner from 1st October, 2016 (being the date subsequent to the date of retirement) till such payment is actually made to the substituted petitioner. Such exercise shall be completed within four weeks from the date of communication of this order. The aforesaid direction is given noting the fact that the substituted petitioner is the registered nominee as per the service book. In the event, the respondent no. 2 finds somebody else's name has been registered as nominee then the respondent no. 2 shall act strictly in accordance with law while making such payment.

21. The writ petition being WPA 4028 of 2018 is allowed to the extent as indicated hereinabove.
22. There will be no order as to costs.
23. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of the requisite formalities.

(Sudip Deb, J.)