

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

HEARD ON: 20.09.2023

DELIVERED ON: 20.09.2023

**CORAM:**

**THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**W.P.A. 8091 of 2020**

**Smt. Rama Rana**

**Vs.**

**The State of West Bengal & Ors.**

**Appearance:-**

**Mr. Uttam Kr. Bhattacharya**

**Mr. Kaustav Mishra**

**.....for the petitioner**

**Mr. Bhaskar Prasad Vaisya**

**Mr. Arindam Chattopadhyay**

**Ms. Lipika Chatterjee**

**.....for the State**

**JUDGMENT**

***(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)***

1. This writ petition is at the instance of a retired Assistant Teacher of a Higher Secondary School challenging the order of the Commissioner of School Education, West Bengal dated August 24, 2020 by virtue of which the school authority was directed to calculate the overdrawal amount for the period from April 1, 1986 to March 31, 1996 and from April 1, 1996 to December 31, 2014.
2. The writ petitioner, who was an Assistant Teacher of a Higher Secondary School retired from service w.e.f. January 1, 2015. She applied before the headmaster of the concerned school immediately after retirement for

release of her retirement benefits. Her pension papers were sent to the Directorate of Pension, Provident Fund and Group Insurance by the concerned District Inspector of Schools (for short 'D.I.'). Directorate of Pension, Provident Fund and Group Insurance raised certain objections against release of pensionary benefits in favour of the petitioner. Such objection was the subject matter of challenge at the instance of the writ petitioner in W.P. 7656(W) of 2018. A coordinate Bench by an order dated April 4, 2019 directed the concerned D.I. to consider and dispose of the representation of the petitioner in accordance with law and on the basis of several decisions of the Hon'ble Apex Court as also by this Court and by passing a reasoned order.

3. Alleging inaction on the part of the respondent authorities, the petitioner filed another writ petition being W.P. 17770(W) of 2019, which was disposed of by an order dated February 19, 2020 by directing the Commissioner of School Education (Law) to expedite the release of pensionary benefit in the light of the Apex Court judgment on overdrawal by passing a reasoned order at the earliest.
4. Thereafter the Commissioner of School Education passed the order dated August 24, 2020, which is under challenge in this writ petition. The Commissioner of School Education was of the opinion that admissible pension should be released in favour of the petitioner after recasting the pay fixation in accordance with law. The Commissioner of School Education further observed that overdrawal amount for certain periods should immediately be calculated separately by the school authority and after

vetting of the same by the concerned Deputy Joint Director of Accounts of the district, the petitioner should immediately deposit such amount.

5. Mr. Bhattacharya, learned advocate appearing for the petitioner submits that during the service tenure of the petitioner there was no allegation from the end of the respondent authorities that the petitioner has drawn amounts over and above the amounts which she was entitled to. He further submits that the authorities cannot direct recovery of the alleged overdrawal amount after the petitioner has retired from service. In support of such contention, Mr. Bhattacharya places reliance upon the Memo No.739/DPPG dated July 19, 2010 thereby highlighting the situations where overdrawal amount cannot be recovered.
6. By referring to the decision of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.*** reported at **(2015) 4 SCC 334**, Mr. Bhattacharya submits that the Hon'ble Supreme Court has summarised the situations, wherein recoveries by the employers would be impermissible in law.
7. Mr. Chattopadhyay, learned advocate representing the State submits that the petitioner received certain amounts during her service tenure over and above the amounts she was entitled to as per the law. He, therefore, submits that the authorities were justified in directing recovery of the overdrawal amount, to which the petitioner was not entitled to under the law.
8. Heard the learned advocates for the parties and perused the materials placed.

9. Admittedly, there was no allegation made against the writ petitioner during her service tenure that an amount in excess of what she was entitled to was being drawn by her. It is only after the petitioner retired from service and applied for release of her retirement benefits that the authorities have alleged that there has been an overdrawal. The Directorate of Pension, Provident Fund and Group Insurance, Finance Department of the Government of West Bengal issued the Memo No. 739/DPPG dated July 19, 2010, wherefrom it appears that under certain circumstances, overdrawal/excess payment cannot be recovered. It would be relevant to extract a portion of the No. Memo 739/DPPG dated July 19, 2010.

*“.....Perusing the aforesaid facts and records, it transpires that if (1) overdrawal/excess amount was not paid on account of any misrepresentation or fraud on the part of the employee.*

*Or (2) such excess payment was made by the employer by applying a wrong Principle for calculating the pay/allowances or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous.*

*Or (3) the employee had no knowledge that the payment received was in excess of what was due or wrongly paid.*

*Or (4) the error leading to such wrong calculation was not detected or corrected within a short time of wrong payment no overdrawal/excess payment is to be deducted from his post retiral benefit.*

*As Pension Sanctioning Authority, he has to send the pension case either recovering overdrawal mentioning one/more grounds of the above four or without deducting overdrawal in the light of four above mentioned grounds”.*

10. The Commissioner of School Education while passing the order dated August 24, 2020 did not return any finding that the overdrawal/excess amount was paid on account of any misrepresentation or fraud on the part of the employee. Since the petitioner cannot be said to be at fault for payment of the amount in excess of what she was entitled to as per the law,

this Court is of the considered view that the overdrawal amount under such circumstances cannot be allowed to be recovered from the petitioner and that too after her retirement.

11. The Hon'ble Supreme Court in the case of *Rafiq Masih (White Washer)* (*supra*) has summarised the following situations wherein recoveries by the employers would be impermissible in law. The Hon'ble Supreme Court held thus:

*"12. 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 herein above, 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.*

*(iii) 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.*

*(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."*

12. As observed hereinbefore, that during the service tenure of the petitioner, the authorities did not allege that the petitioner has drawn amounts in excess of what she was entitled to.
13. The alleged overdrawal is for the period from 1<sup>st</sup> April, 1986 to 31<sup>st</sup> March, 1996 and again from 1<sup>st</sup> April, 1996 to 31<sup>st</sup> December, 2014. Petitioner retired with effect from 1<sup>st</sup> January, 2015. It is not in dispute that the

attempt to recover overdrawal amount was made after the retirement of the petitioner. The case of the petitioner falls within the situations wherein the Hon'ble Supreme Court in the case of **Rafiq Masih (supra)** held that recoveries by employers of overdrawal amount would be impermissible.

14. Since the petitioner has, in the meantime, retired, any direction for recovery from the petitioner would be harsh and therefore, the employer cannot be allowed to recover the alleged overdrawal amount from the petitioner.
15. For the aforesaid reasons, this Court holds that the direction contained in the order of the Commissioner of School Education dated August 24, 2020 to the effect that withdrawal amount for the period from April 1, 1986 to March 31, 1996 and from April 1, 1996 to December 31, 2014 should be calculated by the school authority together with a direction upon the petitioner to deposit such calculated amount is liable to be set aside and quashed and the same is accordingly set aside and quashed.
16. The direction contained in the said order dated August 24, 2020 for recasting of the pay of the petitioner in accordance with law is not interfered with by this Court. The District Inspector of Schools (SE), Jhargram is directed to recast the pay of the petitioner as per the directions contained in the order of the Commissioner of School Education, West Bengal dated August 24, 2020 as expeditiously as possible but positively within a period of three weeks from the date of receipt of server copy of this judgment and order.
17. Upon such recasting of the pay, the Pension Sanctioning Authority is to forward necessary papers to the concerned authorities for taking necessary

consequential steps and the retirement as well as other benefits shall be released within a period of three working weeks thereafter together with interest @ 6 % per annum from the date of retirement till the date of actual payment of the retirement benefits.

18. With the above observations/directions, the writ petition stands partly allowed.
19. There shall be, however, no order as to costs.
20. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

**(HIRANMAY BHATTACHARYYA, J.)**

Pallab AR(Ct.)