

**HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
Appellate Side**

**Present:**

**The Hon'ble Justice Shekhar B. Saraf, J.**

**WPA 9853 of 2022**

**Md. Basiruddin Ahamed**

**-versus-**

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

**For the Petitioner** : **Mr. Moniruzzaman**

**For the Respondent No.6** : **Md. Sarwar Jahan**  
**Mr. Mayeemul Hoque**  
**Mr. Moidal Islam Kayal**

**Heard On** : **September 25, 2023.**

**Judgement On** : **September 25, 2023.**

**Shekhar B. Saraf, J.**

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order dated April 13, 2022 passed by the Secretary, Murshidabad District Primary School Council wherein the petitioner had been directed to deposit an amount of Rs.1,86,592/- against excess salary drawn.

It is to be noted that the petitioner retired on January 31, 2022 three months prior to issue of this particular letter.

It is to be noted that the Supreme Court in the catena of judgments including the case of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others*** reported in **(2015) 4 SCC 334** has stated overdrawn amount cannot be adjusted after the retirement of Group-C or D employee. The relevant paragraphs of the said judgment are delineated hereinbelow:-

“17.....

*It would be pertinent to mention, that Librarians were equated with Lectures, for the grant of the pay scale of Rs 700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class MA, MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification). For those Librarians appointed prior to 3-12-1972, the educational qualifications were relaxed. In Sahib Ram case, a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the appellants concerned were ineligible for the same. The appellants concerned were held not eligible for the higher scale, by applying the principle of equal pay for equal work”. This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.*

*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 required 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 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.*

*19. We are informed by the learned counsel representing the appellant State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.*

*20. The appeals are disposed of in the above terms."*

Keeping in mind the above judgment of the Supreme Court, it is clear that the amount that has been charged as overdrawn, is not in line with the said judgment and accordingly, the letter dated April 13, 2022 is quashed and set aside.

This Court is informed that the petitioner has still not getting the pensionary benefit and other retiral dues.

In light of the same, respondents are directed to immediately ensure issuance of pension payment order within a period of three weeks and to start the pension within five weeks from date.

Needless to mention, all the arrears of pension should be made by the respondents within a period of eight weeks.

With these above directions, WPA 9853 of 2022 is disposed of.

All parties are to act on the website copy of this order.

**(Shekhar B. Saraf, J.)**

*SD*