

34
03.12.2021.
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side
(Via Video Conference)**

W.P.A. 17677 of 2021

**Lakshmi Kanta Ray
-versus
The State of West Bengal & Ors.**

**Mr. Sourav Mitra,
Mr. Biswajit Mal.
...For the Petitioner.**

**Mr. Tapas Kumar Kundu.
...For the State.**

The petitioner was a Head Teacher. He retired from service on 30.11.2019. The Pension Payment Order was issued by the respondent authorities on 10.02.2021. An amount of Rs.2,07,947/- was directed to be refunded on account of alleged overdrawal due to wrong fixation of pay from January, 1998 to October, 2019. Being aggrieved, the petitioner has approached this Court by way of the present writ petition.

I have heard learned counsel for the parties and considered the orders passed by the Hon'ble Supreme Court as well as this court on similar facts.

Following the principles laid down in the case of *Shyam Babu Verma-vs.-Union of India*, (1994) 3 SCC 521, *Syed Abdul Qadir -vs.- State of Bihar*, (2009) 3 SCC 475 and *State of Punjab-vs.-Rafiq Masih*, (2014) 8 SCC 883, (2015) 4 SCC 334, *Chandi Prasad Uniyal-vs.-State of Uttarakhand*, (2012) 8 SCC 417, *Syed Abdul Qadir (supra)* and in *Col. B. J. Akkaravs. -vs- Govt. of India*,

(2006) 11 SCC 709, Civil Appeal No. 3500 of 2006 (High Court of Punjab & Haryana-vs.-Jagdev Singh) and the judgment delivered by Hon'ble Division Bench of this Court in *Asitosh Bhattacharya vs. The State of West Bengal (2015)2 CLT 339* in my considered opinion no recovery could be made from the retiral benefits of the petitioner as there was no misrepresentation and/or fraud nor was the petitioner conscious that he was receiving more than what he was entitled to and accordingly directing to refund the sum of Rs. 2,07,947/- was illegal.

The concerned Treasury Officer is directed to refund the amount of Rs.2,07,947/- to the petitioner along with interest at the rate of 7% per annum with effect from the date of issuance of PPO. Such payment is to be made to the petitioner within a period of eight weeks from the date of communication of this order.

Since no affidavit-in-opposition has been invited, the allegations contained in the writ petition are deemed not to be admitted.

The writ petition stands disposed of.

There will, however, be no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)