

02
02.12.2021.
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 11376 of 2020
(Via Video Conference)**

**Biswanath De
-versus
State of West Bengal & Ors.**

**Mr. Kamalesh Bhattacharya,
Mr. Arup Kumar Sahoo.
...For the Petitioner.**

**Mr. Bhaskar Prasad Vaisya,
Mr. Sagnik Chatterjee.
...For the State.**

The petitioner was serving as an Assistant Teacher of Rathikulgeria Krishnapur Primary School. He retired on attaining his normal age of superannuation on 30th April, 2019. On 31st July, 2019, the petitioner was intimated that he was given certain increments inadvertently since 2006.

In view of such excess amount that was paid to the petitioner, his retiral dues were not released.

The petitioner has approached this Court praying for a direction upon the respondent authorities for releasing his retiral dues.

The learned advocate appearing for the State respondents submits, upon instructions, that as the petitioner received increments which he was not legally entitled to on and from 2006 till his date of retirement, accordingly, till the amount which was paid in excess to

the petitioner is adjusted, the retirement benefits cannot be released in his favour.

It has been submitted that the petitioner is well aware that he was not entitled to receive the increments which were paid to him from 2006.

It has further been submitted that the authorities are well within their jurisdiction to rectify any anomaly as and when the same is detected.

The respondents, however, admits that the petitioner did not have any role to play in the grant of increments in his favour.

The learned advocate appearing for the petitioner relies upon the judgment of the Hon'ble Supreme Court in the matter of State of Punjab & Ors. –vs- Rafiq Masih (White Washer) & ors. reported in (2015) 4 SCC 334 wherein the Court laid down the situations were recoveries by the employers would be impermissible in law.

In the instant case, the petitioner being the Assistant Teacher of a Primary School belongs to the Group 'C' category service. He received the increment for a period of more than five years prior to his retirement and the anomaly, if any, was detected after the petitioner retired from service.

In the situation as mentioned hereinabove, the Supreme Court categorically laid down that recovery would be impermissible in law.

As regards the submission of the respondents that it will be open for them to rectify any anomaly as and when detected the same is accepted by the court.

In view of the above, the instant writ petition is disposed of by directing the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal, the respondent No.3 herein, to take steps for releasing the retiral dues of the petitioner at the earliest, but positively within a period of ninety days from the date of communication of a copy of this order.

Since an anomaly has been detected by the pension audit cell, accordingly, the concerned respondent authority will be at liberty to rectify the same and pay the retirement dues to the petitioner in accordance with the scale which he is legally entitled to receive.

The respondent will, however, not be entitled to recover excess amount that has allegedly been paid to the petitioner.

Till a decision is taken with regard to computation of the retiral dues of the petitioner, the District Inspector of Schools (P.E.), Paschim Medinipur is directed to disburse provisional pension and other admissible dues in favour of the petitioner at the earliest, but positively within a period of three weeks from the date of compliance of all necessary formalities.

W.P.A. 11376 of 2020 stands disposed of.

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

(Amrita Sinha, J.)