

Item No.38

21.03.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 2767 of 2022
Sumitra Rani Maiti (Das)

v.

The State of West Bengal & Ors.

Mr. Sourav Mitra
Ms. Sreyasree Choudhury
... for the petitioner.

Ms. Mitali Mukherjee
... for the State.

The petitioner is a retired primary school teacher. After her retirement on February 28, 2021 the petitioner was directed to refund a sum of Rs. 1,13,011/- (one lakh thirteen thousand and eleven) only as the same was paid to her on account of overdrawal amount due to non-admissible increment.

The petitioner joined service on April 7, 1999 and completed ten years of continuous service on April 6, 2010 and was allowed the ten years' benefit on April 7, 2009. A further benefit was given to the petitioner on July 1, 2009, which according to the respondents, was not payable to her as per GO No. 181-SE(B) dated October 8, 2009 which mentions that in case the employee opts for the benefit on the date of entitlement he/she will get one increment on that date, but will not

be entitled to next annual increment on the next 1st July unless he/she completes six months of service.

In the instant case, the petitioner enjoyed two incremental benefits within six months, one on April 7, 2009 and the other on July 1, 2009. Due to the two incremental benefits enjoyed by the petitioner within the six months period, the respondents directed the petitioner to refund the aforesaid amount, which was overdrawn by her.

The said direction for refunding the overdrawal amount after the employee retired from service is impermissible in view of the direction passed by the Hon'ble Supreme Court in the matter of State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors., (2015) 4 SCC 334.

The petitioner was enjoying the aforesaid amount for more than five years prior to her retirement.

Accordingly, the respondent authority's direction to refund the aforesaid amount allegedly on account of overdrawal is bad in law and is liable to be set aside.

The respondents are, however, entitled to recast and refix the last pay drawn of the petitioner in accordance with her proper scale of pay.

The learned advocate for the petitioner submits that the last pay drawn has already been recasted and refixed and she is receiving her pension accordingly.

In view of the above, the instant writ petition is disposed of by directing the respondent nos. 2 & 3 to refund the amount of Rs. 1,13,011/- only to the petitioner at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

The writ petition stands disposed of.

The instruction given by the District Inspector of Schools (P.E.), Paschim Medinipur be retained with the records.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)