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

**W.P.A 14144 of 2021
(Via Video Conference)**

**Prasanta Dan
-versus
State of West Bengal & Ors.**

**Mr. Md. Sarwar Jahan.
...For the Petitioner.**

**Mr. Ranjan Saha.
...For DPSC.**

**Mr. Pinaki Dhole,
Ms. Kakali Samajpati.
...For the State.**

The petitioner is a retired primary school teacher. His grievance is that after his retirement on 30th November, 2020, his terminal dues have not been cleared.

The respondent authorities have filed a report wherefrom it appears that certain sum was paid to the petitioner in excess of his entitlement on and from 1st July, 2010.

Though there is no formal order of refund of the overdrawal amount but it has been submitted that the authorities have disclosed that until and unless the overdrawn amount is refunded the terminal benefits of the petitioner will not be processed.

As it appears that the payment which was allegedly made in favour of the petitioner in excess of his entitlement was enjoyed by the petitioner for nearly ten years prior to his retirement, the concerned authority ought not to demand for recovery of the same in terms of the order passed by the Hon'ble Supreme Court in the case of State of Punjab –vs- Rafiq Masih reported in (2015) 4 SCC 334.

In the aforesaid judgment the Supreme Court made it clear that recovery from the employees belonging to Group-C when the excess payment has been made for a period in excess of five years before the order of recovery is issued is impermissible. The court also held that recovery from retired employees is not permissible.

In the instant case, the petitioner is a Group-C employee and has already retired from service in the year 2020. According at this stage there is no scope for the respondent authorities to seek recovery of the excess amount paid to the petitioner.

The respondent authorities shall be at liberty to fix the pay of the petitioner strictly in accordance with the scale of pay which the petitioner is entitled to receive.

The respondent authorities are directed to process the retirement dues of the petitioner strictly in accordance with the proper scale of pay which the petitioner is entitled to receive, at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

Till the respondent authorities disburses the final payment to the petitioner, the District Primary School Council and the District Inspector of Schools (P.E.), Paschim Medinipur shall take steps for releasing provisional retirement dues in favour of the petitioner at the earliest, but positively within a period of six weeks from the date of communication of a copy of this order.

W.P.A. 14144 of 2021 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.)