

23.08.2022
Court No.13
Item No.22
AP

WPA 17473 of 2022

**Prakash Ranjan Kar
Vs.
The State of West Bengal and Ors.**

Mr. Partha Sarathi Bhattacharyya
Mr. Prahlad Chandra Ghosh
Mr. Subir Hazra

... For the Petitioner.

Ms. Anwari Quraishi
Ms. Zainab Tahur

... For the State.

Mr. Supriyo Chattopadhyay
Ms. Iti Dutta

... For the Respondent Nos.3 & 4.

Mr. Saibal Acharyya
Mr. Swapan Kumar Chatterjee

... For the Respondent No.8.

Affidavit of service filed in Court today is taken
on record.

The order dated 12.08.2022 is mentioned for
correction.

In the first and second lines of the third
paragraph of the second page of the said order, the
expression “Bangur Colony F.P. School” shall stand
corrected and be read as “Bagura Colony F.P. School”.

Let the aforesaid correction be incorporated in
the order dated 12.08.2022.

The other parts of the order dated 12.08.2022
shall remain unaltered.

The petitioner's wife was an Assistant Teacher in Bagura Colony F.P. School. She died in harness on 29th November 2019 at the age of 36. The deceased had completed about 14 years of service and was entitled to pension.

At the time of processing the pension papers the Sub-Inspector of Schools, Balurghat Sadar Circle had raised objection as regards the entitlement of the deceased to 'A' category scale of pay. Following the said objection, the Sub-Inspector of Schools called upon the petitioner to refund allegedly overdrawl amount from gratuity and other sums of money and deposit the same with the treasury in T.R. Form.

It appears from the records annexed to the writ petition that the writ petitioner's late wife, was permitted by the School and the District Inspector of Schools to enjoy 'A' category pay scale right from the inception of her service. Such 'A' category scale of pay to the petitioner's late wife was also recorded in the office of the District Inspector of Schools. The fixation of the petitioner's wife pay scale was done under the 'A' category pay scale under ROPA 2009 and ROPA 2019 successively.

It is clear and evident from the above that the deceased had absolutely no role to play in the fixation of her pay scale. The question of any fraud or

misrepresentation on her part does not and cannot arise.

Applying the principles in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.** reported in **(2015) 4 SCC 334** as reiterated by the Hon'ble Supreme Court in the case of **Thomas Daniel Vs. State of Kerala and Ors.** reported in **AIR 2022 SC 2153** the impugned order of refund dated 5th April 2022 passed by the Sub-Inspector of Schools, Balurghat Circle shall stand quashed and set aside.

Family pension papers on account of the late wife of the petitioner's service i.e. Mili Saha (Kar) shall be processed by the Sub-Inspector of Schools, Balurghat Circle and the District Inspector of Schools (P.E.), Dakshin Dinajpur with due concurrence and participation of the school in question i.e. Bagura Colony F.P. School, mandatorily and positively within a period of one month from the date of receipt of a copy of this order.

With the aforesaid directions, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)