

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

**WPA 19757 of 2021
(via Video Conference)**

**Shyama Prasad Mandal
-versus
The State of West Bengal & Ors.**

**Mr. Bhagbat Chaudhuri
...For the petitioner**

**Mrs. Jyotsna Roy Mukherjee
..For the State**

**Mr. Ratul Biswas
...For the Board**

The petitioner retired as the Head Teacher of Rambagra Primary School on 30th September, 2019. By an communicating memo dated 22nd June, 2021 the petitioner has been informed that he had overdrawn salary for the period January 1988 to September, 2019 amounting to Rs.1,25,349/- only due to wrong fixation of pay in accordance with ROPA-1990. The petitioner has been directed to deposit the aforesaid amount by way of Treasury Challan.

The petitioner is aggrieved by the direction to refund the aforesaid amount.

The law in this regard has been set at rest by the Hon'ble Supreme Court in the matter of ***State of Punjab vs. Rafiq Masih*** reported in **(2015) 4 SCC 334**. The Court held that withdrawal is impermissible from employees who had retired and if the amount was enjoyed by the employee for a continuous period in

excess of five years before the order of recovery is issued.

In the instant case, intimation was given to the petitioner for refunding the alleged overdrawn amount long after he retired from service and the petitioner enjoyed the alleged excess payment for the period January 1988 to September 2019.

In view of the order passed by the Hon'ble Supreme Court as mentioned hereinabove the direction of the District Primary School Council for refunding the alleged overdrawn amount cannot be supported in law. The same is accordingly set aside and quashed.

The District Primary School Council shall, however, be permitted to refix the pay of the petitioner strictly in accordance with ROPA Rules. The respondent authority is directed to calculate the retirement benefits of the petitioner on the basis of the proper scale of pay that he is entitled to receive. Step shall be taken by the respondent authorities to disburse the terminal dues of the petitioner strictly in accordance with law, at the earliest, but positively within a period of six months from the date of communication of a copy of this order.

Till such time proper calculation is made and final payment is disbursed in favour of the petitioner, the District Primary School Council, Bankura is directed to take necessary steps to disburse provisional terminal benefits in favour of the petitioner within a period of four weeks from the date of communication of a copy of this order.

The writ petition 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.)