

W.P.A. 5521 of 2022

**Subrata Sinha Mahapatra @
Subrata Kumar Sinha Mahapatra
-Vs-
The State of West Bengal & Ors.**

Mr. Tapas Kumar Sinha,
Mr. Arunava Pati.
.....for the petitioner.

Mr. Bhaskar Prasad Vaisya, A.G.P.,
Mr. Sagnik Chatterjee.
....for the State.

In compliance with the direction dated June 14, 2023, Mr. Vaisya, learned Additional Government Pleader files the report of the District Inspector of Schools (S.E.), Bankura, the respondent no.4 herein, let it be kept with the record.

The petitioner was an Assistant Teacher of a Higher Secondary School and has retired from his said service on superannuation on December 31, 2019.

The petitioner, alleging delay in disbursement of his retiral benefits, filed a writ petition being W.P.A. 7778 of 2021. The said writ petition was disposed of on December 17, 2021 directing the respondent no.4 to dispose of the pending representation of the petitioner regarding disbursement of his said benefits.

The respondent no.4 by the impugned order dated February 08, 2022 has disposed of the said representation holding that the petitioner

should not be treated as a trained teacher and accordingly directed the Teacher-in-Charge of the School, the respondent no. 7 herein to rectify the pay scale and pay fixation of the petitioner under different ROPAs and also to re-cast his service book as per rectified pay scale, in consequence thereof, the petitioner was directed to refund the excess amount received by him due to such wrong fixation of his pay scale.

Mr. Sinha, learned Advocate for the petitioner submits that the direction for refund of a sum of Rs. 6,56,614/- allegedly drawn by the petitioner due to wrong pay fixation, is not recoverable in view of the proposition of law laid down by the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.*** reported in **(2015)4 SCC 334**.

The issue is no longer *res integra*. The demand of the authority for refund from the petitioner only before four months before his retirement is not sustainable inasmuch as in the aforementioned decision, the Hon'ble Supreme Court *inter alia* has held that recovery would be impermissible when it is sought to be made from the employees due to retire within one year from the date of the order of recovery.

The order impugned, so far as it relates to the direction for refund of the excess payment

due to wrong pay fixation of the petitioner, is therefore set aside.

The respondent no. 4, however, is directed to expedite the disbursement of the pension to the petitioner, rate of which is to be calculated upon his admissible pay scale.

W.P.A. 5521 of 2022 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)