

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 21136 of 2022

Smt. Kalpita Moitra (Chakladar)

vs.

The State of West Bengal & Ors.

For the Petitioner:

Mr. Samiran Giri, Adv.

For the State:

**Mr. Supriyo Chattopadhyay, Adv.,
Ms. Iti Dutta, Adv.**

Reserved on:

28.03.2023

Judgment on:

20.06.2023

ANIRUDDHA ROY, J.:

Facts:

1. The petitioner was a retired Head Mistress at **Khadimpur Girls High School, District- Dakshin Dinajpur**. The petitioner was appointed as Head Mistress on **September 28, 2001**. Prior thereto the petitioner was the **Assistant Head Mistress** of the said school and under a **Government Memo No. 1245/GA dated September 08, 2000**, the petitioner's pay scale was refixed w.e.f. **December 20, 1999** with an additional increment mentioned therein. From the post of Head Mistress the petitioner had retired on **May 31, 2018**.

2. During her service tenure the Jurisdictional District Inspector of School (SE), Dakshin Dinajpur (for short, the **D.I.**) issued a memo regarding re-fixation of scale of pay in which some mistake was there which was not explained to the petitioner. The petitioner claimed to have made her representation and the petitioner claimed that no step for correction of such mistake had taken place. However, no such representation or document was available on record in the instant writ petition.
3. Till the retirement no step was taken by the respondent authorities for recovery of any alleged overdrawn amount neither the mistake was explained to the petitioner, as claimed by the petitioner.
4. Before retirement the petitioner filed a writ petition being **W.P. No. 3772(W) of 2015** (for short, **the first writ petition**) with a prayer for **re-fixation** of pay scale for the post of head mistress of the said school and a prayer was made for withdrawal of the **Memo dated June 18, 2014** issued by the Deputy Director of Education Department, Dakshin Dinajpur. However, the respondent authorities did not take any step on the basis of the said **Memo dated June 18, 2014** till retirement and the petitioner had received her salary. **The said first writ petition was withdrawn.**
5. The petitioner then filed the second writ petition being **W.P. No. 15686(W) of 2019** (for short, **the second writ petition**) and **withdrew the said first writ petition**. The employment of the petitioner for the post of head mistress was approved **w.e.f. September 28, 2001 at a scale of Rs.8000-Rs.13,500/-** and the petitioner enjoyed the said scale till her retirement. After her retirement,

the petitioner made a representation before relevant authorities seeking release of her retiral benefits and pension. The relevant school authorities also submitted all the records before the D.I. and those were accepted by the Office of the D.I.

6. Since the pension was not released, the petitioner filed the second writ petition, with a prayer to release the provisional pension in accordance with law.
7. Pursuant to the directions made in the second writ petition the D.I. issued a **Memo No. 85/P.PEN dated January 15, 2015** for granting provisional pension to the petitioner on the basis of the last basic pay amount of **Rs.40,200/-, Annexure P-1 at page 34 to the writ petition.**
8. By an order dated June 07, 2022 **Annexure P-3 at page 37 to the writ petition**, the second writ petition was disposed of by a Coordinate Bench directing the D.I. to dispose of the representation of the petitioner dated September 12, 2019.
9. Pursuant to and in terms of the said order of the Coordinate Bench dated June 07, 2022 the D.I. passed the **impugned reasoned order dated June 30, 2022, Annexure P-3A at page 43 to the writ petition.** Through the said impugned order the claim of the petitioner for receiving her retiral benefit/pension was rejected principally on the ground that **since 2014 the petitioner was informed and accordingly the petitioner had knowledge of her mistaken pay fixation and the petitioner had enjoyed the overdrawn amount since at the time of her fixation of pay as head mistress w.e.f. September 28, 2001.**

10. The respondent no.3 by its **Memo dated November 24, 2021** also informed the D.I. that the petitioner had received an excess payment from public exchequer and the salary approving authorities was advised to take step in terms of **Memo dated June 18, 2014, Annexure P-6 at page 132 to the writ petition.**

11. In view of the above facts and circumstance the petitioner had filed the instant writ petition, which is the **third writ petition** praying for the following reliefs:

“(a) A writ in the nature of Mandamus commanding the respondent authorities to release the retiral benefit as admissible in law forthwith and a direction be passed upon the District Inspector of Schools (S.E.), Dakshin Dinajpur to submit the pension papers which was resubmitted by School authority on 24.08.2022 regarding disbursement of retiral benefits of the petitioner to the Director of Pension, Gratuity and Provident Fund within a certain time granted by the Hon’ble High Court;

(b) A writ in the nature of Mandamus directing the District Inspector of Schools (S.E.), Dakshin Dinajpur to calculate the pension amount and also the retiral benefits amount and send the same to the competent authority being the Director of Pension, Gratuity and Provident Fund and Group Insurance along with adding 10% interest due to delay payment from the date of payment;

(c) A writ in the nature of Certiorari commanding and/or directing the Respondent Authorities concerned to certify, transmit and provide entire records relating to this case so that conscionable justice may be administered after setting aside the memo dated 24.11.2021 issued by the Deputy Director Accounts-School Education Department, Dakshin Dinajpur same and a direction be passed upon the concerned authority to disbursed all retiral benefits in accordance with law;

(d) Rule NISI in terms of prayers (a), (b) and (c) above;

(e) A Direction be passed upon the respondent concerned to take immediate steps and disburse the said retiral benefits forthwith on the basis of the pension papers which was submitted and countersigned by the District Inspector of Schools (S.E.), Dakshin

Dinajpur as well as the school authorities time to time @10% interest from the date of retirement till actual payment;

(f) Ad-interim order in terms of prayers (e) above;

(g) Cost and incidental charges.

(h) And to pass such other or further order or orders as to Your Lordships may deem fit and proper”.

12. Pursuant to the direction made by Court a report in the form of affidavit was affirmed on December 02, 2022 on behalf of the respondent no.4 was filed. The respondent no.6 had also filed a report in the form of an affidavit affirmed on December 05, 2022. The petitioner had filed its affidavit-in-opposition to the report filed on behalf of the respondent no.4, which was affirmed on January 11, 2023.
13. The petitioner had filed its written argument. The respondent no.1 to 4 and 8 had also filed their written notes of argument.

Submissions:

14. Mr. Samiran Giri learned counsel appearing for the petitioner submitted that, the petitioner had carried out and completed her employment carrier throughout with an unblemished carrier report. Learned counsel submitted that, till the time the petitioner was informed by the D.I. immediately after re-fixation of petitioner's pay scale that some mistake was there, the D.I. had not taken any step either to clarify such mistake to the petitioner nor did it take any step for recovery as to the overdrawn amount allegedly received by the petitioner. The D.I. then issued the **Memo dated June 18, 2014** which was challenged by the writ petitioner in the first writ petition but D.I. had not taken any step against the petitioner in terms of the said **Memo dated June 18,**

2014. The petitioner had retired on May 31, 2018 till then no step was taken by the respondent authorities for recovery of any alleged overdrawn amount allegedly received by the petitioner. The petitioner was also paid her salary on the basis of the said re-fixation of pay scales. The respondent authorities are, therefore, estopped from claiming any overdrawn amount as held by the DI in its impugned order dated June 30, 2022.

15. Learned counsel for the petitioner submitted that, it is the settled law that unless the employer takes steps within five years from the alleged overdrawn of the amount the employers cannot raised its claim on such account. He further submitted that, if any, overdrawn amount had been paid and the employee with such overdrawn amount had been allowed to retire without any recovery, the same cannot be claimed and recovered after retirement of the employee.
16. In support, the Ld. Counsel for the petitioner had relied upon several decisions, which were as follows:

- i. In the matter of: Mihir Kumar Maity vs. State of West Bengal, reported at 2013(1) CHN (CAL) 34.*
- ii. In the matter of: Asitosh Bhattacharya vs. State of West Bengal & Ors., reported at (2015)2 CAL LT (HC).*
- iii. In the matter of: Sujan Kumar Ghosh vs. The State of West Bengal & Ors., reported at (2017)3 WBLR (Cal) 490.*
- iv. The judgment of the Hon'ble Supreme Court In the matter of: Civil Appeal No. 3500 of 2006, High Court of Punjab & Haryana & Ors. vs. Jagdev Singh.*

- v. In the matter of: State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors., reported at (2015) 4 SCC 334.*
- vi. A judgment of the Hon'ble Supreme Court In the matter of: Civil Appeal No. 7115 of 2010 Thomas Daniel vs. State of Kerela & Ors.*
- vii. In the matter of: W.P.S.T. No. 216 of 2013 State of West Bengal & Ors. vs. Asis Das Gupta.*

17. On the strength of the above, Mr. Samiran Giri learned counsel for the petitioner submitted that, the writ petition should be allowed and the petitioner shall be paid with all his retiral benefits and pensionary benefits by quashing the impugned order dated June 30, 2022 passed by the DI.
18. Mr. Supriyo Chattopadhyay learned counsel appearing for the respondent nos. 1 to 4 and 8 submitted that, the petitioner had joined at the Post of Headmistress on September 28, 2010. The DI by its **Memo dated March 21, 2012 Annexure R-1 at page 7 to the report** in the form of an affidavit affirmed on behalf of the respondent no.4 (for short, the report of DI) informed the petitioner that her IPF Statement was not in order and requested her to resubmit the same after necessary correction. In reply the relevant school through its **Memo dated March 28, 2012, Annexure R-2 at page 8** to the said report of DI stated that the fixation of pay in IPF Statement was in order and requested to approve the same. Learned counsel submitted that, the said letter was issued by the relevant school **under the seal and signature of the**

petitioner herself who was the Headmistress of the relevant school at that juncture.

19. Mr. Chattopadhyay further submitted that by another **Memo dated December 17, 2012 Annexure R-3 at page 9** to the said report of the DI, the DI further intimated the Headmistress (**petitioner**) of the relevant school that the said IPF Statement was not in order. He further submitted that, by a **Memo dated June 05, 2013, Annexure R-4 at page 10** to the report of the DI, the DI informed the Secretary of the Managing Committee of the relevant school that on verification on record it revealed that overdrawal had happened by the petitioner being the teacher concerned w.e.f. September 29, 2001 and informed that such overdrawn amount was required to be returned and deposited in T.R.-7.
20. It was further submitted by the learned State counsel that, the service book along with fixation of option under various **ROPAs** submitted to the concerned Deputy Director of Accounts, School Education Department and the same was returned to the DI by a Memo dated June 18, 2014 with a suggestion to follow paragraph 2 of the **G.O. No. 198-SE(B) dated May 06, 2003 (clarification of G.O. No. 185-SE(B) dated May 04, 2000** at the time of fixation of pay as Head Mistress w.e.f. September 28, 2001 and in accordance with that the pay of the petitioner may be fixed as per **G.O. No. 46-SE(B), dated February 27, 2009.**
21. Referring to two separate Memos dated June 18, 2014 and September 09, 2014 **Annexure R-5** at pages 11 and 12 to the report of the DI, learned State Counsel submitted that, the petitioner being the Headmistress of the relevant

school was requested by the DI and was informed that no further instruction would be given to her regarding the issue.

22. He submitted that, at this juncture the petitioner filed the first writ petition which was affirmed on February 04, 2015.
23. In the light of the above facts, Mr. Chattopadhyay learned counsel submitted that, the petitioner being the Headmistress of the school at the relevant point of time was fully aware of the fact and it was within her knowledge that from 2012 till her retirement from the Post of Headmistress, she had overdrawn the amount to which she was not eligible. Mr. Chattopadhyay submitted that it is wholly illegal and incorrect on the part of the petitioner to contend that the respondent authorities did not take any step for the said overdrawn amount received by the petitioner and allowed the petitioner to enjoy the same and, therefore, the respondents are now estopped claiming the same. The above facts clearly demonstrate that the petitioner had acted mala fide and in an illegal manner and enjoyed the said overdrawn amount which was within her knowledge since 2012 and the respondent authorities had pursued the same all along.
24. He submitted that, the finding of the DI in the said order dated June 30, 2022 is correct and should not be interfered with by this Court.
25. Referring to the judgments relied upon on behalf of the petitioner, Mr. Chattopadhyay submitted that, all those judgments of the Hon'ble Supreme Court were delivered under Article 142 of the Constitution of India and the same would have no binding effect in law. He then submitted that, the fact

situation in the instant case is wholly different. The petitioner was aware of her overdrawn amount since 2012 which was at least six years prior from her retirement. In such facts no relief can be granted to the petitioner either in equity or in law.

26. Mr. Chattopadhyay further submitted that **ROPA-09** which was published under the Memo No. 46-SE dated February 27, 2009 giving a notional effect from January 01, 2006 and actual effect from April 01, 2008, specifically provided that each employee had to file option as per ROPA-09 for revised pay scale. In **ROPA-09** as per **Annexure-II** being the option form, there was a specific clause amounting to a declaration by an employee with a specific undertaking to refund the Government any overdrawn amount, if received by an employee in excess of/her admissible amount on account of an **erroneous fixation of pay** in revised pay structure, immediately when such overdrawn amount comes to the notice of the employee. The petitioner had submitted the said option form being **Annexure P-II to ROPA 09**.
27. Mr. Chattopadhyay submitted that, after furnishing this option form with the specific undertaking it was the obligation of the petitioner to return the overdrawn amount in 2012 itself when the same was informed to her much prior to her retirement and having not done so the petitioner shall have to face consequence.
28. In support of his contentions, Mr. Chattopadhyay had relied upon the following decisions:-

- (i) *In the matter of: Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors., reported at (2012) 8 SCC 417.*
- (ii) *In the matter of: State of U.P. vs. Neeraj Awasthi & Ors., reported at (2006) 1 SCC 667.*
- (iii) *In the matter of: Ram Pravesh Singh & Ors. vs. State of Bihar & Ors., reported at (2006) 8 SCC 381.*

Decision:

29. After considering the rival contentions raised on behalf of the parties and on perusal of materials on record, it appeared to this Court that, the admitted facts need to be discussed at the outset. The petitioner was appointed as Assistant Headmistress of the school on December 20, 1999 and her appointment was approved by the DI on June 16, 2000. She was sanctioned with an additional financial benefit for holding higher responsibilities by a memo issued by the DI dated September 08, 2000. The petitioner was appointed as Headmistress of the relevant school on September 28, 2001 and her appointment was approved by the DI under Memo dated March 04, 2003. She was sanctioned with an additional financial benefit for holding higher responsibility under the memo issued by the DI dated September 19, 2003. The petitioner was sanctioned one additional increment in respect of twenty years service benefit under a Memo dated April 12, 2013 w.e.f. June 07, 2002. Under a **Memo dated March 21, 2012** the DI informed the petitioner that her IPF Statement was not in order and requested her to resubmit the same after necessary correction. In **paragraph 5** to the writ petition the petitioner pleaded

that during the service period of the petitioner the DI issued a memo informing that regarding re-fixation of scale of pay some mistake was there but the mistake was not properly explained by the DI. The petitioner chose not to mention the specific date of memo when for the first time the petitioner had received notice of the fact that there was a mistake on re-fixation of pay scale. The DI through its report in the form of affidavit had disclosed the facts and documents where from it appeared that, by **Memo dated March 21, 2012** the DI informed the petitioner that her IPF Statement was not in order and requested to resubmit the same after necessary correction **Annexure R-1 to the report of the DI**. By a **Memo dated March 28, 2012, Annexure R-2 to the said report of DI**, the relevant school replied that the fixation of pay in IPF Statement was in order and requested to approve the same. **This document was signed by the petitioner as the headmistress of the relevant school.** The DI further by a **Memo dated December 17, 2012, Annexure R-3 to the report of the DI** informed the **Headmistress** of the relevant school i.e. **the petitioner** stating that the IPF Statement was not in order. By a further **Memo dated June 05, 2013** the DI informed the Secretary of the Managing Committee of the relevant school that on verification it was noted that an overdrawal was made by the teacher concerned w.e.f. September 29, 2001 and such overdrawn amount was required to be deposited in TR-7. The name of the concerned teacher was the **petitioner** as mentioned in the said document. The petitioner being Headmistress of the school was once again requested under the **Memo dated September 09, 2014** issued by the DI, **Annexure R-5**

to the report of the DI to act as per the Memo dated June 18, 2014 which was forwarded to the DI from the Office of the Deputy Director of Accounts **Annexure R-5 to the report of the DI**. At this juncture the petitioner filed the first writ petition in February, 2015.

30. By filing her affidavit-in-opposition affirmed on January 11, 2023 the petitioner dealt with the said report of the DI. On a close perusal of the averments made in the said affidavit-in-opposition, it appeared to this Court that, none of the above contentions of the DI and the documents relied upon by the DI in its report were denied neither any documentary evidence was disclosed to controvert the contentions of the DI. In addition, from the statements made in the writ petition more specifically in **paragraph 6** thereto, it would be evident that the **Memo dated June 18, 2014** issued by the Deputy Director of Accounts to the DI, **Annexure P-5 at page 11 to the report of DI** was within the **knowledge of the petitioner** which was challenged in the first writ petition, **which was withdrawn**. Such Memo dated June 18, 2014 was there much prior to the retirement of the petitioner in 2018. Inasmuch as, the petitioner had also not denied the fact that while opting for revised pay scale the petitioner had furnished the necessary undertaking for return of overdrawn amount in terms of **Annexure-II to ROPA 09**. On the overall assessment of the above facts, this Court is of the firm view that, the respondent authorities since 2012 had been pursuing on the issue of overdrawn amount with the petitioner and the petitioner at all material time was aware of this fact. It is, thus, incorrect to allege on the part of the petitioner that the State authority did not

pursue with its claim on account of the amount overdrawn by the petitioner and only after her retirement in 2018, the authorities denied to pay the superannuation benefit to the petitioner.

31. From the relief claimed in the instant writ petition it would be further evident that the petitioner had not challenged the decision of the State employer with regard to its finding or the reasons in support thereof claiming the amount overdrawn by the petitioner, instead the petitioner only claimed reliefs on her ***retiral benefits as admissible in law*** and further prayed for setting aside of the **Memo dated November 24, 2021** issued by the respondent no.3. This would further amply demonstrate that after withdrawal of the first writ petition the petitioner consciously chose not to challenge the finding of the authority that amount was overdrawn by the petitioner.
32. ***In the matter of: Rafiq Masih (supra)*** the Hon'ble Supreme Court had repeatedly spoken of that in exercise of its authority under equity and in exercise of its power under Article 142 of the Constitution of India in most of the cases the recovery of overdrawn amount from the employee concerned were not permitted. In **paragraph 18** of the judgment the Hon'ble Supreme Court had formulated a guiding principle under which the recovery of overdrawn amount were not permitted. From the facts of the instant case, it would appear that the petitioner much before its retirement since 2012 was made aware of the amount overdrawn by her. The petitioner being the head mistress and/or the administrative head of the school had also made communications under her signature and seal with the DI on the issue and made her deliberation on

the same. **It may be a fact that the petitioner had not mislead or misrepresented her employer on the basis whereof the excess amount was paid to the petitioner, but it was equally true that the petitioner was made aware of the amount overdrawn contemporaneously on repeated occasions. All such occasions had happened much prior to her retirement.**

Petitioner being an educated lady acting as head mistress and/or administrative head of the school would have immediately returned the said amount overdrawn by her. From the reliefs claimed in the instant writ petition, as quoted above, it would further be evident that the petitioner had not challenged the decisions of recovery of the overdrawn amount as contemplated by the DI or the State authority and the petitioner only claimed release of her admissible retiral benefits and the disbursement thereof. There was no challenge thrown by the petitioner in this writ petition against the quantum and method of recovery of the overdrawn amount by the State authority. In the facts of the instant case, the conduct of the petitioner does not deserve any equitable relief. The ratio laid down by the Hon'ble Supreme Court ***In the matter of: Rafiq Masih (supra)***, therefore, would be of no assistance to the petitioner.

33. ***In the matter of: Thomas Daniel (supra)*** the recovery of the overdrawn amount was claimed from the employee almost after ten years of his retirement. In the facts of the instant case, the petitioner was made aware of the amount overdrawn by her at least six years prior to her retirement and the petitioner herself made a detailed deliberation on the issue contemporaneously

since 2012 which was at least six year prior to her retirement. Hence the ratio decided ***In the matter of: Thomas Daniel (supra)*** would be of no assistance to the petitioner in the facts and circumstances of the instant case.

34. ***In the matter of: Mihir Kumar Maity (supra)*** the petitioner retired from service on superannuation on October 31, 2004. His pension paper was submitted to the jurisdictional DI by the School Authority on April 13, 2003. Trouble started after submission of the petitioner's pension papers. In course of preparing the statement of retiral dues of the petitioner, the DI was of the view as to the amount overdrawn by the petitioner. In the facts of the instant case, the petitioner was made aware of the overdrawn amount in 2012 at least about six years prior from her retirement and that petitioner had a detailed deliberation on the issue with the DI contemporaneously. Hence the ratio laid down ***In the matter of: Mihir Kumar Maity (supra)*** would be of no assistance to the petitioner in the facts and circumstances of the instant case.

35. ***In the matter of: Asitosh Bhattacharyya (supra)*** the State employer informed the recovery of overdrawn amount of the employee on December 07, 2011 whereas the petitioner retired from service on attaining the age of superannuation on December 31, 2011. Immediately about three weeks prior to the retirement of the employee, the State employer decided for recovery of the overdrawn amount. In the facts of the instant case as already discussed above the petitioner was made aware of the overdrawn in 2012 which was about six years prior to his retirement and the petitioner had a detailed deliberation on the same contemporaneously. Hence the ratio decided ***In the***

matter of: Asitosh Bhattacharyya (supra) would be of no assistance in the facts and circumstances of the instant case.

36. ***In the matter of: Sujan Kumar Ghosh (supra)*** the pay of the petitioner was refixed by the DI from time to time. The petitioner retired from his service on June 01, 2006. On May 16, 2006 pension payment order was issued mentioning the overdrawn amount. In the instant case as already discussed above, the petitioner was made aware of overdrawn amount in 2012 which was about six years prior to his retirement and the petitioner had a detailed deliberation on the same contemporaneously. Hence the ratio decided ***In the matter of Sujan Ghosh (supra)*** would be of no assistance in the facts of the instant case.
37. ***In the matter of: Jagdeb Singh (supra)*** the employee had compulsorily retired from his service on February 12, 2003. The employer served recovery notice on February 18, 2004. In the facts of this case as already discussed above, the petitioner was made aware of overdrawn amount in 2012 which was about six years prior to his retirement and the petitioner had detailed deliberation on the same contemporaneously. Hence the ratio decided ***In the matter of: Jagdeb Singh (supra)*** would be of no assistance in the facts of the instant case.
38. From reading of the settled law laid down on the issue, as discussed above, it appeared that the relief granted to the employee resisting state employer from recovering the overdrawn amount was on equity. The facts and circumstances,

as already discussed, in the instant case, this Court is also of the firm view that, the petitioner does not deserve any equitable relief.

39. In view of the foregoing discussion and reasons, this court is of the firm view that this writ petition is devoid of any merit and not relief can be granted to the petitioner.
40. Resultantly, this writ petition, **WPA 21136 of 2022** stands **dismissed** without any order as to costs.
41. However, in the event of recovery of the overdrawn amount from the petitioner, the State employer shall recover only the principle quantum paid to the petitioner in excess as overdrawn amount after making a detailed calculation and upon recovery and/or adjustment of such overdrawn amount, the DI and/or any other appropriate authority shall immediately release the superannuation benefit to the petitioner receivable by her strictly in accordance with law. The entire exercise as directed above shall be carried out and completed by the DI and/or appropriate authority positively within a period of ten weeks from the date of communication of this judgment and order. The State employer shall then go on paying the petitioner with all her emoluments arising out of her employment without any fetter.

(Aniruddha Roy, J.)