

Item-4. 29-11-2023

MAT 1919 of 2023
CAN 1 of 2023

sg Ct. 8

Indra Mani Shukla
Versus
The State of West Bengal & Ors.

Mr. Indra Mani Shukla
... appellant-in-person
Mr. Sakti Pada Jana, Adv.
Mr. Subhajyoti Dhar, Adv.
...for the School Authority
Ms. Koyeli Bhattacharyya, Adv.
...for the WBBSE

1. This appeal is arising out of an order dated 31st August, 2023. The appellant was an Assistant Teacher of Gyan Bharati Vidyapith, Kolkata. He retired from service on 19th September, 2019. On 11th September, 2019, the Secretary of the Managing Committee of the said school informed the appellant that he had a post graduate degree in an irrelevant subject and he could not be entitled to post graduate scale of pay but he had enjoyed such scale of pay for the period from 1st April, 2003 to November, 2018 and accordingly, he would be required to refund the overdrawn amount.
2. The Learned Single Judge upon arriving at a finding that the petitioner was in no way responsible for such overdrawn amount and in the meantime he might have expensed the said amount or have utilized the said amount. It would be inequitable at this stage to direct refund of the said amount. The learned Single Judge followed the dictum of the Hon'ble Supreme Court in State of *Punjab and Ors. vs. Rafiq Mashi* reported in *(2015) 4 SCC 334*, and set aside the advice of the school authority to refund the withdrawn amount under TR

Form No.7. The learned Single Judge has directed re-fixation of the pension amount commensurate with his admissible scale of pay.

3. The appellant appearing in person has assailed this order on the ground that persons similarly placed have earlier enjoyed the same benefit and he could not have been denied to the benefit of fixation of pension on the basis of the higher scope of pay, which he had received from the year 2003 till he retired from service on the basis of his post graduate degree.
4. We are unable to accept the said submission. If a mistake is committed in respect of one of the employees, that cannot be shown as a ground to perpetuate another wrong. Admittedly, the petitioner is not entitled to higher scale of pay at that relevant time as he was having a post graduate degree in an irrelevant subject. On such consideration, we do not find any reason to interfere with the order of learned Single Judge.
5. The appeal accordingly stands dismissed. In view of the dismissal of the appeal, the application being CAN 1 of 2023 also stands dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)