

Item-
58. 19-12-2023

sg Ct. 8

MAT 2428 of 2023
CAN 1 of 2023

Md. Emdadul Haque
Versus
The State of West Bengal & Ors.

Mr. Rudranil De, Adv.
Mr. Zia-ul-Haque, Adv.
Mr. Aiswaryya Mukherjee, Adv.
...for the appellant
Mr. K.J. Yusuf, Adv.
Ms. Rupsha Chakraborty, Adv.
...for the State

1. Affidavit of service filed in Court is taken on record. In spite notice, DPSC, Murshidabad is not represented.
2. We have heard the learned Counsel for the appellant and the State. Admittedly, the excess amount has been paid to the teacher was not because of any misrepresentation or fraud on his part and he also had no knowledge that the amount that was being paid to him was more than what he was entitled to under this service Rules. On the verge of his retirement, he received a notice on 26th August, 2022 and from the Secretary, Murshidabad District Primary School Council directing him to refund a sum of Rs.1,23,200/- which is just three months from his retirement i.e. 31st December, 2022.
3. In view of the decision of the Hon'ble Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih* reported on (2015) 4 SCC 334, the said amount is not recoverable. The relevant observation of the Hon'ble Supreme Court in this regard is reproduced hereinbelow:

“A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee’s retirement, or within one year from the date of his retirement on superannuation.”

4. In view thereof, the appeal is allowed. The impugned decision of the District Primary School Council dated 26th August, 2022 and the letter dated 3rd May, 2023 issued by Assistant Director of School Education are quashed.
5. The pension papers should be sent immediately to the appropriate authorities for release of the pension.
6. The entire process should be completed within a period of eight weeks from date.
7. The appeal and the application are accordingly, disposed of.
8. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)