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13.06.2023.  
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**In the High Court at Calcutta  
Circuit Bench at Jalpaiguri  
Constitutional Writ Jurisdiction**

**W.P.A. 833 of 2023**

Kamala Devi Niroula  
-versus  
The State of West Bengal & Ors.

Mr. Debajit Kundu  
...For the Petitioner.

Mr. Subir Kumar Saha  
Mr. Pretom Das  
...For the State.

Affidavit of service filed in Court today is taken on record.

The petitioner was an Assistant Teacher of a primary School. He retired from service on 13.06.2016. The Pension Payment Order was issued by the respondent Authorities on 22.03.2022. An amount of Rs.2,49,083/- was deducted on account of alleged over-drawal. Being aggrieved, the petitioner has approached this Court by way of the present writ petition.

I have heard learned counsel for the parties and considered the orders passed by the Hon'ble Supreme Court as well as this court on similar facts.

Following the principles laid down in the case of *Shyam Babu Verma-vs.-Union of India*, (1994) 3 SCC 521, *Syed Abdul Qadir -vs.- State of Bihar*, (2009) 3 SCC 475 and *State of Punjab-vs.-Rafiq Masih*, (2014) 8 SCC 883, *Chandi Prasad Uniyal-vs.-State of Uttarakhand*, (2012) 8 SCC 417, *Syed Abdul Qadir (supra)* and in *Col. B. J. Akkaravs. -vs- Govt. of India*, (2006) 11 SCC 709, Civil

*Appeal No. 3500 of 2006 (High Court of Punjab & Haryana-vs.-Jagdev Singh)* and the judgment delivered by Hon'ble Division Bench of this Court in *Asitosh Bhattacharya vs. The State of West Bengal (2015)2 CLT 339* in my considered opinion no recovery could be made from the retiral benefits of the petitioner as there was no misrepresentation and/or fraud nor was the petitioner conscious that he was receiving more than what he was entitled to and accordingly withholding the sum of Rs.2,49,083/- was illegal.

In view of the decision laid down in the case of *Union of India vs. Tarsem Singh (2008)3 SCC 648* the relief prayed for by the petitioner may be granted in spite of the delay in approaching the writ Court as it did not affect the right of third parties.

The concerned Treasury Officer is directed to release the amount of Rs. 2,49,083/- to the petitioner along with interest at the rate of 6 per cent per annum with effect from the date of issuance of PPO. Such payment is to be made to the petitioner within a period of 8 weeks from the date of communication of this order.

Since no affidavit-in-opposition has been invited, the allegations contained in the writ petition are deemed not to be admitted.

W.P.A. 833 of 2023 is disposed of.

There will, however, be no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**(Raja Basu Chowdhury, J.)**