

In the High Court at Calcutta

Circuit Bench at Jalpaiguri

**Constitutional Writ Jurisdiction
Appellate Side**

WPA 2486 of 2021

**Smt. Juthika Dey Nee Roy @ Smt. Juthika Roy (De)
-versus-
The State of West Bengal & Ors.**

Ms. Suman Sehanabis (Mandal),Adv.
Mr. Salok Sah,Adv.

.....for the petitioner.

Mr. Subir Kr. Saha,Adv.
Ms. Bedashruti Bose,Adv.

...for State.

The petitioner has filed the present writ application praying for quashing of the order wherein the respondent authorities have directed for recovery of certain benefits which the petitioner has availed during her service period. The petitioner was initially appointed as Assistant Teacher on 28.8.1984 purely on temporary basis in Shyama Prasad Primary School, Cooch Behar. By an order dated 5th June, 1985, the appointment of the petitioner was confirmed. By an order dated 13.7.1995 it was ordered that the petitioner was appointed in deputation vacancy and joined on 29.8.1984 and later on she was appointed on regular basis w.e.f. 5.6.1985 and there is no break

in service, the petitioner is entitled to get all benefits of her service rendered w.e.f. 29.8.1984 to 6.6.1985. By an order dated 9th August, 1996, the concerned authorities appointed the petitioner on probation for a period of two years with effect from 29th August, 1984. On 31st December, 2016 the petitioner superannuated from the post of Head Teacher. By a communication dated 6th December, 2012, the Assistant Director, Office of the Director of Pension, Provident Fund and Group Insurance has informed that the petitioner was in deputation on 29th August, 1984 and she was appointed as Assistant Teacher on 5th June, 1985. Accordingly, 10 years', 18 years' and 20 years' benefits would be counted from 7th June, 1985 instead of 29th August, 1984.

In the service book of the petitioner it is noted that there is no break in service and the petitioner is entitled to get all the benefits of his past service rendered from 29th August, 1984. By a communication dated 8th February, 2017, the Assistant Director, DPPG requested the District Inspector of School to follow the Government Order bearing No. 96-SE (Secondary) dated 15th February, 1995 of School Education Department, Secondary Branch.

Counsel for the petitioner submits that the Government Order which the Assistant Director, DPPG has relied upon is not applicable in the case of the petitioner as the petitioner is working in the Primary School and the Government Order is of the secondary school.

Counsel for the petitioner submits that the deputation service of the petitioner was considered and recognized and the service of the petitioner was taken into consideration as regular service with effect from 29th August, 1984 and, as such, at the fag end of the service of the petitioner, the respondent authorities cannot be said that the service of the petitioner was regularized illegally. Counsel for the petitioner submits that the case of the petitioner is fully covered in the case of Rafiq Masih reported in (2015) 4 SCC 334 (State of Punjab vs. Rafiq Masih) and submitted that the petitioner was retired on 31st December, 2016 and after the superannuation of the petitioner, the respondents have issued an order for recovery of alleged excess amount which is not permissible under law.

Per contra, learned Counsel for the respondents submits that though the petitioner was allowed to regularized with effect from 29th August, 1984, but, subsequently, the authorities

came to know regularization of the petitioners is not in accordance with the Government Order and, as such, the concerned authorities are directed that her service cannot be considered to be regularized with effect from 29th August, 1984. By taking into consideration the Government Order, the respondents have issued the notice for recovery of the said amount.

Considered the rival submissions of the respective parties and perused the materials on record, the petitioner was initially appointed on 29th August, 1984. Subsequently, the petitioner was appointed on regular basis and the service rendered by the petitioner from 29th August, 1984 was regularized. At the fag end of the service of the petitioner, the respondents have issued a notice that regularization of the service from the date of her initial appointment is not in accordance with the Government Order and, accordingly, the respondents intend to recover excess amount paid to the petitioner. It is a settled law as reported in the case of Rafiq Masih (supra) wherein the Hon'ble Supreme Court has categorized the following categories which reads as under:

It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly

been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabve, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

In view of the judgment passed by Rafi Mashhi, this Court finds that the case of the petitioner is squarely covered in the judgment passed by the Hon'ble Supreme Court and, as such, the notice issued by the respondent authorities for recovery of amount from the account of the petitioner even after the superannuation of the petitioner's service is not sustainable and, accordingly, the same is set aside. WPA No. 2486/2021 is thus disposed of.

(Krishna Rao, J.)