

Court No. 2  
**10.5.2024**  
(Item No. ML-64)  
(AB)

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**W.P.A. 3955 of 2020**

Tapan Kumar Mandal  
VS  
The State of West Bengal & Ors.

Ms. Juin Dutta Chakraborty  
Mr. Bidan Modak  
..... for the petitioner  
Mr. Arindam Chattopadhyay  
Ms. Lipika Chatterjee  
.... For the State

The petitioner was working as an **Assistant Teacher** at one **Brahman Samaj High School, District – Paschim Medinipur**. The petitioner retired on **September 30, 2005, Annexure P-1** at **page 17** to the writ petition. There was a demand from the State authority on account of alleged overdrawn and accordingly a sum of **Rs.44,657/-** was deducted.

Ms. Juin Dutta Chakraborty, learned advocate appears for the petitioner submits that, after deduction of the said sum the petitioner has been receiving his due pension. The petitioner claims refund of this deducted amount of **Rs.44,657/-** with interest.

Mr. Arindam Chattopadhyay, learned State counsel appears for respondent Nos. 1 to 4.

The law is well settled by the Hon'ble Supreme Court ***In the matter of: State of Punjab V. Rafiq Masih reported at (2015) 4 SCC 334***. The relevant observation of the Hon'ble Supreme Court is quoted below:

***“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:***

***(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).***

***(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.***

***(iii) Recovery from the 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 discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully 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 3 arbitrary to such an extent, as would far outweigh the equitable***

***balance of the employer's right to recover."***

Admittedly in the instant case the petitioner was retired on **September 30, 2005** and on the same day when the Pension Payment Order was issued the deduction was shown there, which is not permissible in law.

In view of the above, the **deduction** for a sum of **Rs.44,657/-** from the employment benefit of the petitioner stands **set aside** and **quashed**.

The respondent No. 2 shall forthwith issue the revised Pension Payment Order without reflecting the said deduction in favour of the petitioner positively within a period of **two weeks** from the date of communication of this order.

The respondent No. 2 then shall forward and transmit the said revised Pension Payment Order to the respondent No. 4 positively within a period of **one week** thereafter.

The respondent No. 4 upon receiving the said revised Pension Payment Order shall calculate the interest @ **6% per annum** since the date of retirement of the petitioner i.e. **September 30, 2005** till the actual date of payment and then shall disburse and pay the petitioner the total amount together with interest by crediting the bank account of the petitioner as would be furnished by the petitioner positively within a period of **three weeks** from the date of receiving the particulars of bank account from

the petitioner after the revised Pension Payment Order is transmitted to him.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions this writ petition being **W.P.A. 3955 of 2019** stands **allowed**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**(Aniruddha Roy, J.)**