22.04.2025.
PB
Sl. No.269.
Ct. No.25.

WPA 7522 of 2009

Minati Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Sk. Imtiaj Uddin.
... For the Petitioner.

Mr. Satyajit Talukdar.
... For the State.

1. The writ petitioner is an Assistant Teacher, who has retired from service on and from November 1, 2005.

2. After her retirement and starting from the date August 17, 2006, that is, near about after one year from the date of retirement of the petitioner, the Director, Pension, Provident Fund and Group Insurance, Government of West Bengal has started raising various objections regarding issuance of pension to the petitioner. Ultimately, as per direction of the said respondent, the petitioner had to submit with the department an amount of Rs.1,14,355/-, alleged to be the overdrawn amount of salary earlier paid to the writ petitioner. Allegedly, the writ petitioner has been granted pension at a reduced rate than she is entitled to.

3. Mr. Imtiaj Uddin, learned advocate for the petitioner has submitted that post-retiral deduction of

the salary or subjecting the writ petitioner to the reduced scale of pension are the steps taken by the said respondent beyond the scope and purview of law existing and governing the field. He would say that the petitioner having been uninterruptedly serving the school and being paid due salary till last, should be granted with the pension at the rate of her last drawn salary. Instead, it is alleged, that the petitioner has been wrongfully subjected to reduced scale of pension.

4. Furthermore, it is submitted that the alleged amount which the petitioner was forced to deposit being overdrawn salary, should be immediately refunded back to the writ petitioner. In this regard, Mr. Imtiaj Uddin has relied on an earlier decision of this Court dated April 18, 2024, being WPA 6729 of 2020 (Sucheta Muhuri Vs. State of West Bengal & Ors.), in which the Court after relying a decision of the Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih** reported in **(2015) 9 SCC 334,** has held that the amount recovered as the overdrawn of salary after retirement of the concerned teacher, should be refunded back to him.

5. Mr. Imtiaj Uddin, learned advocate for the petitioner has sought that the present writ petition may be allowed, by granting the writ petitioner, similar relief.

6. Mr. Talukdar, learned advocate has represented the State respondent.

7. Mr. Talukdar has relied on a report of the District Inspector of Schools (SE), Barrackpore, North 24 Parganas dated February 19, 2025. On the basis of the same, he has submitted that firstly, the pension file of the writ petitioner is not traceable at present being an old case file. Secondly, he has stated that though initially objections were raised by the Director, Pension, Provident Fund and Group Insurance, Government of West Bengal, however, at the later stage, payment order has been on May 7, 2009, and she is being granted pension at present.

8. The reporting authority has stated in the said report that an amount of Rs.1,14,335/- has been adjusted being overdrawn amount of salary of the petitioner. The report, as above, is taken on record.

9. Undeniably, in this case, after about one year from the date of retirement of the writ petitioner, that is, November 1, 2005, the respondent authority has raised various objections while granting pension to her.

10. Record reveals that by dint of her letter dated January 25, 2007, the Headmistress of the school has complied with the query of the concerned respondent, which were the points of objection raised by it.

11. Be that as it may, at a subsequent date, the petitioner has been subjected to submission of the alleged overdrawn amount of salary to the tune of Rs.1,14,355/-, which she has submitted to ensure

immediate release of pension in her favour. It is also an admitted fact in this case that the writ petitioner has been granted pension as per the Pension Payment Order issued in her favour, which amounts to not at the rate her last drawn salary, but at a reduced rate.

12. In the factual background as above in the present case, the decision of the Hon'ble Supreme Court, is worth noting. The Hon'ble Supreme Court has laid down the law in Rafiq Masih's case (supra), in the following words:-

> **"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.**
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> **10. In view of the aforesaid constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery**

would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India".

13. The Court has summarized there, few situations, when recoveries by employers would be impermissible in law, like:-

"18. (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 arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

14. On careful consideration of the verdict of the Hon'ble Apex Court in Rafiq Masih's case (supra) as mentioned above, the Court is of the considered

opinion that the law does not permit recovery of overdrawal amount, if at all, from a teacher, who is due to retire within one year. Therefore, the similar inference would be drawn as regards the present petitioner also in whose case, the recovery process has been started after about one year from the date of her retirement.

15. Considering the law as laid down by the Hon'ble Supreme Court in the judgment as referred to above, the Court finds the recovery of any overdrawal amount even if considered to be wrongfully drawn earlier by the concerned person cannot be maintainable after retirement of the concerned person.

16. In such view of the facts and circumstances of the present case and the law as discussed above, the steps taken by the respondent authority compelling the writ petitioner to submit an amount of Rs.1,14,355/- on account of alleged overdrawn salary, appears to be an act not been in terms of the settled law. Hence, the same is de hors the law and illegal. The same cannot be sustainable in the eye of law.

17. On the discussion as above, the Court finds it proper to dispose of the instant writ petition with the following directions:-

i) Let the amount recovered from the writ petitioner to the tune of Rs.1,14,355/- be immediately refunded to the writ petitioner, within a period of four weeks from the date of communication of copy of this order;

ii) Within the said period, let the pension of the petitioner be re-fixed at the rate of salary last drawn by the writ petitioner;

iii) The revised Pension Payment Order may be issued after re-fixation of pension;

iv) Arrear amount of pension as stands due and outstanding to the writ petitioner in accordance with the revised Pension Payment Order shall be paid, within three months from the date of communication of copy of this order;

v) Revised pension of the petitioner be commenced immediately after issuance of the revised Pension Payment Order;

18. The writ petition is disposed of.

19. Since no affidavit is called for in this case, the allegations made in the writ petition, are deemed to have been denied by the respondents.

20. Urgent certified copy of this order, if applied for, shall be supplied to the parties, upon compliance of all necessary formalities.

(Rai Chattopadhyay, J.)