

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 13797 OF 2018

Smt. Pratima Dewanjee Singha Roy

Vs.

The State of West Bengal & Ors.

For the Petitioner

: Mr. Ekramul Bari

: Sk. Imtiaz Uddin

For the State

: Mr. Pantu Deb Roy

: Mr. Pannalal Bandopadhyay

Heard on

: 21/03/2025

Judgment on

: 21/03/2025

Rai Chattopadhyay, J. :-

1. The writ petitioner is a retired Assitant Teacher of Balaramdighi G.S.F. School under Jhargram West Circle, who is aggrieved that inappropriate pension is being granted to her which, according to her, is an arbitrary and illegal exercise having been done by the respondent authorities.
2. By filing the present writ petition, the petitioner has challenged an order of the District Inspector of Schools (Primary Education), Paschim Medinipur (hereinafter referred to as 'the D.I.') dated May 17, 2018, by dint of which, the said respondent authority has informed the petitioner that the DPPG, West Bengal vide its letter dated August 28, 2017, has raised objection for providing "A" category benefit in pension to the

petitioner, on the plea of the petitioner's training certificate being not a legible one to be accepted as a valid training certificate by the authority. The D.I. has informed that queries have been made to seek reply from the Chairman, Paschim Medinipur DPSC regarding the Office Memorandum, if any, earlier relied on by the said authority, to grant the petitioner 'A' category pay scale. It is informed further in the said impugned letter that response from the Chairman Paschim Medinipur DPSC is still awaited.

3. The relevant facts may be stated in nutshell, that, the petitioner was appointed in the said school on May 15, 1986. She has retired from service upon attaining the age of superannuation on September 30, 2017. During the entire period as above, that is, from May 15, 1986 to September 30, 2017, the petitioner has been granted with the 'A' category pay scale. The petitioner's service as above with the school, has been duly approved by the respondent authority. As stated earlier, the petitioner has last drawn salary as per 'A' category scale of pay, at the time of her retirement.
4. Immediately before her retirement, that is, on August 31, 2017, the D.I. has written a letter to the Chairman, DPSC seeking the Government Order, by dint of which 'A' category pension may be sanctioned to the petitioner, on the basis of her training certificate, that is, "Bal Sevika Training Certificate". A letter of the DPPG, West Bengal has been mentioned by the D.I. in its letter dated August 31, 2017, addressed to the Chairman, DPSC, Paschim Medinipur.

5. In the meantime, the petitioner has made several presentations for grant of appropriate pension. Hence, the D.I. has written the said letter dated May 17, 2018 in response to the petitioner's representations for grant of pension as per 'A' category pay scale, stating therein that objections have been raised by DPPG, West Bengal regarding grant of 'A' category benefit in pension to the petitioner, due to the training certificate of the petitioner being not legible for consideration.

6. Mr. Bari appears for the petitioner. Mr. Bari has raised vehement objection as to the stand taken by the respondent authorities in granting the petitioner pension at the rate of 'A' category scale. He says that, during the entire service period, the petitioner has been allowed to enjoy 'A' category pay scale. That she has drawn 'A' category pay scale, last at the time of her retirement also. That her service has been duly approved by the respondent authorities and throughout the entire service period of the petitioner, there has not been any objection raised by the respondent authorities, regarding the pay scale being enjoyed by her. Hence, according to Mr. Bari, at the fag end of the service period, particularly after retirement of the petitioner, her existing benefits in the form of pay scale of 'A' category, cannot be curtailed or withheld by the respondent authorities on any pretext whatsoever. To buttress his argument, Mr. Bari has relied on the decision of the Supreme Court in the **Rafiq Masih's case**, that is, **State of Punjab & Ors. Vs. Rafiq Masih (Whitewasher)** reported in **(2014) 8 SCC 883**. Mr. Bari has also relied on the judgment of the Hon'ble Division Bench of this Court dated

December 2, 2024 in **MAT 2176 of 2023, (State of West Bengal and Others Vs. Samar Chattopadhyay and Others)** on the similar proposition as determined in **Rafiq Masih's case (supra)**. He says that at the fag end of the career or after retirement of an incumbent, the excess amount of pay, if any, cannot be demanded for refund, even if it is on the basis of erroneous fixation of scale of pay. Mr. Bari says that, according to the law settled as above, to govern the field, the retiral benefits or future pensionary benefits cannot be reduced with any demand or refund of an amount said to have been paid in excess of what was actually due to the said incumbent.

7. He says that the law having been settled in the manner as stated above, in case of the present petitioner, the respondent authorities would also not be authorized under the law to withhold her pension as per the last pay drawn by her.
8. On the facts and grounds as above, Mr. Bari has sought for an order to be passed in this writ petition.
9. Mr. Deb Roy, learned AGP, is representing the State. The D.I. has submitted a report in Court which is relied on by Mr. Deb Roy in his argument. Mr. Deb Roy has stated that it is not a fact that the writ petitioner has been deprived of the pensionary benefit, thereby violating her valuable constitutional and statutory rights. He says that the petitioner's training qualification would not be eligible to be taken into

consideration in so far as the “Bal Sevika Training Certificate”, as produced by the petitioner, is not a competent or credible document as per the Rules, for grant of any credit and a commensurate pay scale to the incumbent. He has referred to the relevant portion of the report, that D.I. has stated therein regarding no Government Order to be in existence for treating the “Bal Sevika Training Certificate” as a certificate competent for grant of ‘A’ category scale. Hence, by treating the petitioner appropriately, the authorities have extended to the petitioner an appropriate pension at ‘B’ category scale, to which the petitioner would be eligible as per law, Mr. Deb Roy has stated. Therefore, in the present case, according to the said respondent, there is no cogent ground for the petitioner to agitate such grant of pension and hence the respondent seeks that the writ petition may be dismissed.

- 10.** Heard both. Perused the available records.
- 11.** There is no denial in the present case regarding the fact, that the petitioner since from the date of her appointment in the school on May 15, 1986, has been granted ‘A’ category pay scale, till the date of her superannuation on September 30, 2017. In the intermittent period, during which the petitioner has served in the school, there has not been any objection raised by the respondent authorities regarding grant of ‘A’ category pay scale to the petitioner.
- 12.** On the verge of retirement of the petitioner, suddenly the respondent authorities have arisen from its deep slumber and started questioning

about the validity and credibility of the training certificate of the petitioner.

13. It is rather a less pertinent issue in the present case, that whether or not the training certificate of the petitioner is a valid one for granting her 'A' category pay scale, for the reason that rightly or wrongly the respondents have allowed the petitioner 'A' category pay scale for the entire period of her service life. It is only after her retirement, the objection as regards pension in accordance with 'A' category pay scale has been raised on the ground of invalidity of her training certificate.

14. As stated earlier, the issue whether the authority can deduct or adjust or withhold the existing benefit of the employee, said to be paid in excess from what he or she was eligible to, due to erroneous fixation of pay scale, from the retiral benefits of the said person or from the future pensionary benefits of her, has been a matter of concern for the constitutional courts in several cases. The issues as above, have been set at rest by the Hon'ble Supreme Court in the case of **Rafiq Masih (supra)**, as stated earlier. In the same, the Court was deciding upon the issue of balancing of conflicting claims of the employer who has an equitable right to recover any excess payment, vis-à-vis hardship caused to the employee in case recovery is directed. The Court holds that recovery of the amount, paid in excess without fault of the recipient, would be impermissible. The Court has determined a list, though not exhaustive, when recoveries by the employer would be impermissible. Let the relevant portion of the said judgment be quoted here:

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

15. Similar proposition has been upheld by the Hon'ble Division Bench of this Court in the judgment of **Samar Chattopadhyay (Supra)**. There the issue has been, if the petitioner would be eligible for career advancement scheme benefits projected through fixation of pension, having not given an undertaking at the time of availing the benefit. The Court has decided in negative, thereby restraining deduction from the post-retirement benefits of the incumbent.

16. The law having been settled in the manner as above, which has propounded that there may be an error in calculating and granting pay scale to the petitioner, but the same having not been detected during the entire service life of the incumbent and only detected after his or her retirement, cannot be realized by way of demand or deduction from the

pensionary benefits of the incumbent, the Court has to look into settled proposition of law.

17. The ratio of the decisions as mentioned above, therefore, squarely applies in case of the present petitioner too. According to the respondent, granting 'A' category pay scale to the petitioner during her service life, has been an error as the pay scale so granted on the basis of her "Bal Sevika Training Certificate", may not have been proper as the "Bal Sevika Training Certificate" is not an eligible testimonial of her training in accordance with law. However, rightly or wrongly, the petitioner has been all along granted the 'A' category pay scale. Now, she has retired and matter relates to grant of pension to her, which she is eligible after rendering unblemished service during the entire service life. Needless is to mention, that pension is closely related with the right to life and livelihood of a Government Servant which is guaranteed to him/her as per the constitutional mandate. This means an appropriate amount of pension and not something, which is not commensurate to the last pay drawn by the petitioner or else such grant of pension would not only be improper but illegal pension, de hors the prevalent rules or law.

18. Admittedly, the petitioner's last pay drawn, has been in accordance with 'A' category pay scale. Therefore, in accordance with the rules, the petitioner would be eligible to draw 'A' category pension. Instead, she is

being paid with 'B' category pension. This is definitely withholding of appropriate pension of the petitioner, for a reason which cannot stand as a valid reason in the eye of law, after the judgment of the constitutional courts, as mentioned above. In such circumstances, the Court finds that the steps taken by the respondent/DPPG, West Bengal and/or D.I. thereby withholding 'A' category pension to the petitioner is an irrational, arbitrary and illegal act, which is liable to be set aside.

19. On the finding as above, the Court is of considered opinion that, the impugned letter dated May 17, 2018 containing the decision of the DPPG, West Bengal, vide its letter dated August 28, 2017, is a nullity in the eye of law and is, therefore, set aside.

20. Let the concerned respondent no. 4/DPPG, West Bengal immediately grant pension to the petitioner at 'A' category scale, with effect from the following date of the date of her superannuation. Necessary modified Pension Payment Order be immediately issued by the said respondent no. 4, within a maximum period of three weeks from the date of communication of this judgment.

21. The arrear differential amount of pension shall also be released by the respondent no. 4 to the petitioner, within a period of two months from the date of communication of copy of this judgment.

22. With the directions as above, the writ petition no. WPA 13797 of 2018 is allowed and disposed of.

- 23.** Since no affidavit-in-opposition has been called for in the case, the allegations in the writ petition are deemed to have been denied by the respondents.
- 24.** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattpadhyay, J.)