

07.11.2025
Item No. 15
Ct. No. 07
AN

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

**WPA 19653 of 2025
Sankari Samanta
vs.
State of West Bengal & ors.**

Mr. Kalyan Kumar Panda
Mr. Uttam Kumar Roy

... for the petitioner

Mr. Subrata Bhattacharya

... for the State

1. Affidavit of service filed on behalf of the petitioner is taken on record.
2. By the present writ petition, the petitioner seeks direction upon the respondent authorities to refund the petitioner the amount deducted towards the overdrawal of pay amounting to Rs. 1,12,735/- together with interest.
3. The petitioner contends that husband of the petitioner was a Head Teacher of Tantisal Primary School, Hooghly and he retired from service on superannuation on 1st November, 1992. The husband of the petitioner died on 22nd October, 2012. The pension payment order was issued in favour of the husband of the petitioner on 16th January, 2002 giving effect of the pension from 1st November, 1992. The authorities have deducted an overdrawal in pay

amounting to Rs. 1,12,735/- arbitrarily. Challenging such action of the respondent authorities, the petitioner has preferred the present writ petition.

4. Mr. Kalyan Kumar Panda, learned advocate appearing for the petitioner relying on the decision of the Hon'ble Supreme Court in the case of ***State of Punjab & ors. versus Rafiq Masih (White Washer) & ors.*** reported in ***(2015) 4 SCC 334*** and a decision of the Coordinate Bench of this Court passed in ***Rekha Rani Pratihar vs. The State of West Bengal & ors.*** in ***WPA 13063 of 2024*** submits that the petitioner is entitled to the amount deducted towards the overdrawal in pay, since such recovery is impermissible in law after retirement of the employee.
5. On the contrary, Mr. Subrata Bhattacharya, learned advocate representing the State submits that at the time of disbursement of the pension, it was detected that there was overdrawal and as such there is no illegality and arbitrariness on the part of the respondent authorities in deducting the overdrawal in pay. He seeks for dismissal of the writ petition.
6. Upon hearing learned advocates for the respective parties, the only issue which falls for consideration in the writ petition is whether the respondent authorities was justified in deducting the overdrawal in pay after retirement of the employee.

7. In order to find an answer to the aforesaid query, it would be apposite to reproduce the relevant paragraph no.18 of the decision of Hon'ble Supreme Court in *Rafiq Masih (supra)* as hereunder:

"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 employees, 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 3 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."

8. The facts as narrated in the writ petition are that the husband of the petitioner retired on 1st November, 1992. The pension payment order shows that the same has been issued on 16th January, 2002. Such overdrawal in pay has been deducted after 10 years of retirement. Bearing in mind the proposition as laid down by the Hon'ble Supreme Court in *Rafiq Masih*

(*supra*) and the decision of the Coordinate Bench in *Rekha Rani Pratihar (supra)*, this Court is of the view that the petitioner is entitled to the refund of the overdrawal in pay.

9. Accordingly, respondent no. 2, the Director of Pension, Provident Fund & Group Insurance, Government of West Bengal and also respondent no. 4, the Treasury Officer, Arambagh are accordingly directed to release the amount of Rs. 1,12,735/- to the petitioner together with interest @ 8% per annum from the date issuance of the pension payment order till the date of actual payment. Such payment shall be made to the petitioner within a period of eight weeks from the date of communication of this order.
10. Petitioner is directed to communicate this order to the respondent no. 2, the Director of Pension, Provident Fund & Group Insurance, Government of West Bengal and also respondent no. 4, the Treasury Officer, Arambagh, for necessary action
11. With the above directions, the writ petition being no. **WPA 19653 of 2025** stands disposed of.
12. Since no affidavits have been called for, the allegations made in the writ petition are deemed to be not admitted.
13. Consequently, connected applications, if any, also stand disposed of.
14. Interim orders, if any, stand vacated.

15. There will be no order as to costs.
16. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Bivas Pattanayak, J.)