

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Jalpaiguri Circuit Bench**

Present: The Hon'ble Justice Aniruddha Roy

WPA 1400 OF 2025

Subhajit Kar
Vs.

The State of West Bengal & Ors.

For the Petitioner	:	Mr. Anirban Chakraborty, Adv. Ms. Taniya Bhounik, Adv.
For the State	:	Ms. Bedashruti Bose, Adv. Ms. Pratusha Dutta Choudhury, Adv.
Heard on	:	03.09.2025
Judgment on	:	03.09.2025

Aniruddha Roy, J.

Affidavit of service filed in Court today, is taken on record.

Ms. Bedashruti Bose and Ms. Pratusha Dutta Choudhury, learned counsel appeared for the State.

The father of the petitioner was the **Assistant Teacher** of a **Primary School**. The petitioner's father died in harness on **04.09.2022**.

On **24.08.2023** the father of the petitioner had to deposit a sum of **Rs.75,893/-** as the condition precedent for disbursement of his retiral dues since it was alleged that during the tenure of his service, he had overdrawn the said amount.

It appears from record that such overdrawn amount was credited to the father of the petitioner on account of wrong pay fixation. The petitioner was not responsible for fixation of such erroneous pay scale.

In view of the several decisions of the Hon^{ble} Supreme Court e.g **SHYAM BABU VERMA -VS- UNION OF INDIA** reported *in (1994) 2 SCC 521*; **UNION OF INDIA & ORS. -VS- TARSEM SINGH** reported in *(2008) 8 SCC 648* and **STATE OF PUNJAB & ORS. -VS.- RAFIQ MASIH (WHITE WASHER) & ORS.** reported in *(2015) 4 SCC 334*, the issue whether such overdrawn amount can be adjusted against the retiral benefits of an employee is no longer res integra.

However, to clarify the issue, paragraph '18' of the decision of the Hon^{ble} Supreme Court in the case of **Rafiq Masih (supra)** 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 II 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."

In view of the discussion made above, this Court is of the opinion that the petitioner is entitled to the relief as prayed for. Accordingly, the concerned Director of Pension, Provident Fund and Group Insurance, Government of West Bengal and also the concerned Treasury Officer are directed to release the said amount of **Rs.75,893/-** along with interest **@8% per annum** thereon in favour of the petitioner from the date of issuance of the pension payment order till the date of payment, such payment is to be

made within a period of eight weeks from the date of communication of this order.

On the above terms, this writ petition being **WPA 1400 of 2025** stands disposed of, without any order as to costs.

Photostat certified of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)

D. Das, P.A.