

**High Court At Calcutta
In the Circuit Bench at Jalpaiguri
Constitution Writ Jurisdiction
Appellate Side**

W.P.A. 2290 of 2024

**Dhirendra Nath Sarkar
-versus
The State of West Bengal & Ors.**

**Mr. Ekramul Bari
Ms. Rinka Chakraborty
...For the Petitioner.**

**Mr. Subir Kumar Saha, Ld. AGP
Mr. Sandip Guha Roy
...For the State.**

1. Report by way of an affidavit filed on behalf of the respondent no. 3 is taken on record.
2. The petitioner retired from service as Assistant Teacher on 31.05.2024. Immediately prior to retirement the petitioner was directed to refund an overdrawn amount of Rs. 2,70,421/- allegedly on account of wrong fixation. The petitioner was intimated that the aforesaid amount will be recovered from the amount of gratuity and pensionary dues by the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal. The same is impugned in the instant writ petition.
3. The petitioner submits that the said amount ought not to be deducted immediately prior to his retirement.
4. In view of the order passed by the Hon'ble Supreme Court in the matter of **State of Punjab & Ors. -vs- Rafiq Masih (White Washer) & Ors. reported in**

(2015) 4 SCC 334 recovery from the retired employees or the employees who are due to retire within one year of the order of recovery is impermissible. Recovery from the employee where the excess payment has been made for a period in excess of five years before the order of recovery is issued, is also impermissible.

5. In line with the above ratio laid down by the Hon'ble Supreme Court, the recovery that has been sought to be made from the terminal dues of the petitioner cannot be accepted by the Court.
6. The impugned communication of the Headmaster dated 6th June, 2024 intimating the petitioner about the recovery of the overdrawn amount is liable to be set aside, and is hereby set aside.
7. The Director of Pension, Provident Fund and Group Insurance, Government of West Bengal, the concerned District Inspector of Schools (SE) and the concerned Treasury Officer are directed to take steps for issuance of Pension Payment Order and for disbursal of the terminal benefits in favour of the petitioner along with interest @ 5 per cent per annum on and from the due date till the date of actual payment at the earliest but positively within a period of eight weeks from the date of communication of this order.
8. The writ petition stands disposed of.
9. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)