

6th Feb., 2026
Item no.D/L 31
Court No. 18
Pradip, A.R.(Ct.)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Case No. **WPA 543 of 2026**

In the matter of :
Debaki Nandan Das *.... Petitioner*
VS.
The State of West Bengal & Ors. *....Respondents*

For the Petitioner:
Mr. Debasis Sur
Mr. Banshi Badan Maity *....Advocates*

For the State:
Ms. Sipra Mazumdar
Mr. Naren Ghosh Dastidar *....Advocates*

1. Affidavit of service filed in Court today is taken on record.
2. The petitioner is serving in the post of clerk and is due to retire from service on 28th February, 2026. His allegation is that his pension file has not been made ready as the petitioner is unable to pay the sum of Rs. 4,37,338/- which was paid to him as excess salary for the period July, 2009 to February, 2025.
3. The petitioner has annexed documents to show that the salary was paid as per the pay fixation made by the District Inspector of Schools, Secondary Education, Barrackpore, North 24-Parganas way back on 9th July, 2010.
4. The petitioner has annexed documents in support of the submission that his wife is suffering from various medical issues and it is practically impossible for him to refund the amount as demanded.

5. Prayer has been made to direct the respondent authorities to process his pension file so that he may receive his terminal dues immediately after his superannuation.
6. Learned advocate representing the State respondents opposes the submissions made on behalf of the petitioner.
7. Instruction forwarded by the District Inspector of Schools, Secondary Education, Barrackpore, North 24 Parganas dated 15th January, 2026 has been relied upon.
8. It appears therefrom that the petitioner was initially appointed as Group-‘D’ staff on 18th September, 1997. He was thereafter appointed in the post of Group-‘C’ (Clerk) in the same school on 3rd January, 2009 by the School Managing Committee and the appointment of the petitioner was approved by the concerned District Inspector of Schools.
9. The Group-‘C’ post in which the petitioner was appointed was not a promotional one but a fresh appointment. The District Inspector of Schools inadvertently fixed the pay of the petitioner in the Group-‘C’ post considering it as a promotional post instead of fresh appointment. The error was detected at the time of processing the pension file of the petitioner. As objection has been raised by the accounts department, the pension file of the petitioner has been returned with a direction to refund the overdrawn amount through treasury challan.
10. Upon hearing the parties and on perusal of the documents placed before the Court, it appears that the petitioner was no way responsible for the fixation of pay. The appointment of the petitioner in the post of Clerk stood approved by the District Inspector of

Schools way back in the year 2010 and the pay of the petitioner was also fixed accordingly.

11. The petitioner enjoyed the pay from 2010 onwards till processing of his pension file in February, 2025. The District Inspector of Schools, in the instruction forwarded, has clearly recorded the error on the part of the District Inspector of Schools in fixing the pay of the petitioner.
12. The Hon'ble Supreme Court in **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.** reported in **(2015) 4 SCC 334** laid down that the amount cannot be directed to be refunded if the employee was enjoying the pay for more than five years prior to the date of recovery.
13. The Court also held that 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 such case recovery would be impermissible.
14. In the instant case, the petitioner was enjoying the higher scale of pay from July, 2009 till February, 2025. The same cannot be directed to be refunded in line with the judgment passed by the Hon'ble Supreme Court in the matter of Rafiq Masih (White Washer) (supra).
15. Over and above, the petitioner has expressed his financial difficulty to refund the amount at this stage as he requires the money for medical treatment of his wife.
16. In view of the above, the direction passed by the authority to refund the overdrawn amount cannot be accepted by the Court. The same stands set aside.

17. It will be open for the respondent authority to fix the pay of the petitioner in the proper scale, but the petitioner cannot be directed to refund the amount overdrawn by him.
18. The District Inspector of Schools shall take steps to make the pension file of the petitioner ready and forward the same to the DPPG for issuance of Pension Payment Order.
19. The petitioner, the school and the District Inspector of Schools shall cooperate with each other for the purpose of making the pension file of the petitioner ready at the earliest but positively by 30th June, 2026.
20. The writ petition stands disposed of.
21. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Amrita Sinha, J.)