01.04.2026
Item No. 11
Ct. No. 14
AN

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA/6005/2026
MD. ABDUS SABOOR
VS
STATE OF WEST BENGAL AND ORS.

Mr. Sourav Mitra
Ms. Sreyasree Choudhury
... for the petitioner

Mr. Debasish Chattopadhyay
... 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 respondent authorities for refund of the overdrawal amount of Rs. 4,59,843/- deposited by the petitioner towards overdrawn salary together with interest at the rate of 18% per annum from the date of deposit till the date of actual payment.
3. The petitioner contends that he was an Assistant Teacher of Gangaprasad High Madrasah, Post Office Madanpur, District Murshidabad. The petitioner retired from service on superannuation on 31st January, 2024. Prior to retirement the petitioner was directed by the concerned District Inspector of Schools (S.E.) to refund the overdrawn salary of Rs. 4,59,843/- for the period from May, 2005 to March, 2023 in order to process the pension file. Pursuant thereto, the petitioner deposited the aforesaid amount of

overdrawal of salary on 1st March, 2024. The direction for deposit of the aforesaid amount towards overdrawal amount of salary is impermissible in law. Being aggrieved by such action on the part of the respondent authorities, the petitioner has preferred the present writ petition.

4. Mr. Sourav Mitra, learned advocate appearing for the petitioner submits that such direction to deposit the overdrawal amount of salary is impermissible in law on two score, firstly, that the same has been directed within one year prior to retirement of the petitioner and secondly, the period of excess payment is more than 15 years. To buttress his contention, he relies 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***. He also relies on the decisions of the Coordinate Bench of this Court passed in ***Jamal Abdul Nasir versus The State of West Bengal & ors.*** in ***WPA 19337 of 2025*** and ***Sarmistha Goswami versus The State of West Bengal & ors.*** in ***WPA 26430 of 2025***. He seeks for appropriate direction for refund of the aforesaid amount together with statutory interest.

5. Mr. Debasish Chattopadhyay, learned advocate representing the State does not raise any objection and leaves the matter to the discretion of the Court.

6. The only issue which falls for consideration is whether the respondent no.4, District Inspector of Schools

(S.E.), Murshidabad was justified to direct for deposit of overdrawal of salary or not.

7. In order to examine the aforesaid issue, it would be appropriate to reproduce the relevant paragraph no.18 from *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. From the facts it appears that the overdrawn salary of Rs. 4,59,843/- has been deposited by the petitioner after his retirement. The excess salary period as appearing from Annexure 'P-1' at page 18 of the writ petition pertains to the period from May, 2005 to March, 2023 which is more than five years before such order being passed. The employee concerned has retired on 31st January, 2024. Bearing in mind the

proposition of the Hon'ble Supreme Court in *Rafiq Masih (supra),* the direction by respondent no.4, District Inspector of Schools (S.E.), Mursidabad for deposit of overdrawn salary is impermissible in the facts and circumstances of the case.

9. Accordingly, respondent no.2, Director of Pension, Provident Fund & Group Insurance, Government of West Bengal, and respondent no.4, District Inspector of Schools (S.E.), Murshidabad as also respondent no.3, Treasury Officer, Domkal are directed to release the amount of Rs. 4,59,843/- in favour of the petitioner together with interest @ 8% per annum from the date of deposit till the date of actual payment within a period of twelve weeks from the date of communication of this order.

10. Learned advocate for the petitioner is directed to communicate this order to respondent no.2, Director of Pension, Provident Fund & Group Insurance, Government of West Bengal, and respondent no.4, District Inspector of Schools (S.E.), Murshidabad as also respondent no.3, Treasury Officer, Domkal, for necessary compliance.

11. With the above observations, the writ petition being no. ***WPA 6005 of 2026*** 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.)