

WPA 10745 of 2024

Ranjan Kr. Sinha
Vs.
The State of West Bengal & Ors.

Mr. Prahlad Chandra Ghosh

Mr. Subir Hazra

... for the petitioner

Mr. Saibal Acharyya

Mr. Sukumar Sarkar

...for the School Authority

- 1.** Pursuant to the Court's direction dated June 12, 2026, a notice has been served upon the respondent authority.
- 2.** Affidavit of service is filed by Mr. Ghosh for the petitioner. Let that be taken on record.
- 3.** None appears for the State respondent in spite of service of notice.
- 4.** For that reason, the matter is taken up for hearing and disposal in absence of the State respondent. The petitioner as well as the respondent school authority is represented.
- 5.** In the instant writ petition, the petitioner's prayer is that his e-pension file may be directed to immediately be forwarded by the respondent No.2 to the respondent No.3 for issuance of the Pension Payment Order, calculating his pension as per his last drawn pay.
- 6.** Mr. Ghosh, learned advocate for the writ petitioner has submitted that though the petitioner has been released with admissible retiral due including pension after his superannuation and that pursuant to an order of this Court dated November 18, 2024, he has not been granted pension in accordance with his last drawn pay. The petitioner's case is

that, the respondent has granted lesser amount of pension to him, calculated on the basis of his pay which has been his last drawn pay. As such, according to the petitioner, the pension has not been granted to him in accordance with law. Mr. Ghosh says that the instant writ petition has been filed for requisite remedy of the petitioner in that respect to seek an order of the Court, so that the petitioner can be granted with a pension including arrear thereof, in accordance with his last drawn pay.

7. The petitioner, who has been an Assistant Teacher, has retired with effect from April 30, 2023 upon reaching age of superannuation. At the time of superannuation, the petitioner has been alleged to have overdrawn salary and for that reason, the respondent authority initially directed him to refund the alleged overdrawn amount. By dint of an order of this Court dated November 18, 2024, the respondent authority has released to the petitioner the amount of retiral dues including the pension which they admit to be payable to the writ petitioner. However, as per the petitioner, that is not in terms of his last drawn pay and pension paid, which is de hors the law.
8. In this regard, Mr. Ghosh has cited the Supreme Court judgment in the ***State of Punjab and Others versus Rafiq Masih*** reported at **2015 4 SCC 334**. The following portion thereof is relevant in this case: -

“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 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 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."

9. Since from the facts and circumstances of the present case, it is found that the alleged recovery was initiated to be made by the respondent authority on the ground of overdrawal of salary by the petitioner, thereby considering the pay scale granted to be not applicable to him. Hence, the respondent authority is ultimately admitted the amount of pension based on the pay of the petitioner virtually deducting the amount of enhancement in his pay scale, earlier allowed to him.
10. However, the law is found to have been settled and reached its finality vide the judgment of Supreme Court in **Rafiq Masih (supra)** which authoritatively restrains any deduction of pay at the end of the career of a person even if the same is found to have been erroneously allowed to the person during his service life.
11. In such view of the fact and law, the Court finds that, in application of the ratio of the decision of **Rafiq Masih (supra)** the present writ petition by the petitioner seeking refixation of his pension as per his last drawn pay scale should succeed. Hence, the writ petition is allowed with the directions: -

i) The petitioner is not liable for any refund of salary;

ii) The petitioner is entitled for grant of pension at a rate fixed on the basis of his last drawn salary paid to him in the month of April, 2023;

iii) Accordingly, the respondents Nos. 2 and 3 are directed to immediately take appropriate steps and release pension to the writ petitioner by refixation of his pension as well as issuance of Pension Payment Order afresh, within a period of four (04) weeks from the date of communication of copy of this order;

iv) Arrear amount of pension which stands due and outstanding as per the refixation made in terms of direction as above, shall be paid within a period of three (03) months from the date of communication of copy of this order.

12. With the aforesaid direction, writ petition No. WPA 10745 of 2024 is disposed of along with pending application, if any.

13. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)