

18.03.2026
Sl. No.10(DL)
Ct. No.14
srm

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**W.P.A. No.15542 of 2025
Md. Majibar Rahaman Sardar
Versus
State of West Bengal & Ors.**

Mr. Ekramul Bari, Sr. Adv.
Sk. Imtiaj Uddin

...for the Petitioner.

Mr. Tanmay Kumar Ghosh,
Ms. Debdooti Dutta

...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 for cancellation and/or withdrawal of the letter under Memo no. 69/KMM/2025 dated 26th June, 2025 (*Annexure P/17*) of Teacher-in-Charge Kakoti Mahobubia Senior Madrasah, P.O. Bholanathpur, District-Dakshin Dinajpur intimating respondent no.5, District Inspector of Schools (SE), Dakshin Dinajpur of the overdrawn amount of Rs.11,17,134/- to be recovered from the petitioner upon re-fixation.
3. The petitioner contends that he was an Assistant Teacher of Kakoti Mahobubia Senior Madrasah. The recommendation letter dated 22nd May 2000, issued by the West Bengal Regional School Service Commission, Northern Region, Malda wrongly recorded the

qualification of the petitioner as B.A.(Pass) which was subsequently rectified on 11th January, 2001 and the qualification of the petitioner was directed to be read as M.M. instead of B.A.(Pass). On 27th April, 2001, the pay scale of the petitioner was fixed taking into consideration his qualification of M.M. The petitioner till his retirement received the pay as per the pay scale fixed in the year 2001. However, on the verge of retirement it was indicated to the petitioner by the respondent authorities that there was wrong fixation of pay and therefore recovery process has to be initiated for recovery of the overdrawn amount from the petitioner.

4. Challenging such action of the authority concerned the petitioner filed a writ petition being WPA 21996 of 2024 on the apprehension of recovery of overdrawn amount. The said writ petition was dismissed on 11th September 2024 on the ground that neither the District Inspector of Schools (SE), Dakhin Dinajpur has re-fixed the pay nor any conclusive decision has been taken and the writ petition is premature. However, petitioner was not precluded from questioning the decision if taken by such authority namely District Inspector of Schools (SE), Dakhin Dinajpur.
5. Being aggrieved by and dis-satisfied with the aforesaid order passed in the writ petition, the petitioner filed an appeal being MAT 1882 of 2024, which was also dismissed on the self-same ground. However, the appellate court also left it open to the petitioner-

appellant to take steps in the event any right is affected by fixation of the scale of pay and an attempt is made for recovery. By the impugned letter the process of recovery has been initiated, wherein it is noted that the petitioner has to make payment of Rs.11,17,134/- towards overdrawn amount due to wrong fixation. The action of the respondent authority is impermissible in law. Hence, this writ petition.

6. Mr. Ekramul Bari, learned Senior Advocate appearing for the petitioner submits that at the time of recommendation for appointment of the petitioner, the scale of pay was incorrectly fixed considering the qualification of the petitioner to be BA (Pass). However, subsequent thereto qualification of the petitioner was corrected as M.M on 11th January 2001 and fixation of pay scale of the petitioner was accordingly rectified by the authority concerned on 27th April, 2001 taking into consideration the aforesaid qualification of the petitioner as M.M. The petitioner has been receiving such pay on the basis of the correct fixation since his joining. There is no such wrong fixation as has been alleged in the impugned letter. By the impugned letter process has been initiated by the respondent authority for recovery of the alleged overdrawn amount. In the earlier round of litigation liberty was granted, by the learned Single Judge as well as the Appellate Court, to the petitioner to challenge such action. As attempt is made to recover the alleged excess amount vide the impugned letter, in exercise of such liberty granted the petitioner has

challenged the said action of the respondent authority. The petitioner has already retired on 30th November, 2024 and the letter has been issued after his retirement. Such action is impermissible in law. To buttress his contention, he relies on the following decisions,

(i) *State of Punjab & Ors. versus Rafiq Masih (White Washer) & Ors.* reported in **(2015) 4 SCC 334**, passed by Hon'ble Supreme Court;

(ii) *Smt. Kalpita Moitra (Chakladar) versus The State of West Bengal & Ors. (In Re: FMA 777 of 2023)* of the Hon'ble Division Bench; and

(iii) *Srimanta Kanrar versus The State of West Bengal (In Re: WPA 28420 of 2023)*, of the co-ordinate Bench of this Court. He seeks for setting aside of the impugned letter dated 26th June, 2025.

7. On the contrary, Mr. Tanmay Kumar Ghosh, learned Advocate appearing for the State-respondents submits that the recovery process has not been initiated as yet. The District Inspector of Schools (SE), Dakshin Dinajpur is yet to take a decision in this regard. Hence, the writ petition is premature one and is liable to be dismissed.
8. Upon hearing learned Advocate for the respective parties the only issue which falls for determination is whether the impugned letter of Teacher-in-Charge, Kakoti Mahobubia Senior Madrasah dated 26th June, 2025 is sustainable in law or not.
9. Admittedly, the petitioner's qualification at the time of recommendation was noted as B.A.(Pass) UR. However, *vide* letter of Assistant Secretary, West Bengal Regional

School Service Commission, Northern Region, Malda dated 11th January, 2001 the qualification of the petitioner was corrected as M.M. Subsequent thereto fixation of pay scale of the petitioner was accordingly rectified by the authority concerned on 27th April, 2001 taking into consideration the aforesaid qualification of the petitioner as M.M. The petitioner has been receiving such pay from date of his joining after rectification. Throughout the service tenure of the petitioner the concerned respondent authority never raised any question regarding wrong fixation. Such dispute has been indicated by the concerned respondent authorities in the month of July, 2024, just prior to three months of his retirement, vide letter dated 29th July, 2024 issued by the OSD & EO Director of Madrasah Education, West Bengal addressed to the District Inspector of Schools (SE), Dakshin Dinajpur asking for taking necessary action for pay fixation and also proceed for recovery of overdrawn amount from the incumbent, i.e. the petitioner. The petitioner approached this Court by filing writ petition being WPA 21996 of 2024 as well as appeal. The writ petition as well as the appeal was dismissed as at that point of time no process was initiated, and both the courts left it open to the petitioner to take steps in the event any attempt is made to recover any excess amount. It is not in dispute that the letter impugned is a process/attempt to recover the overdrawn amount after retirement of the petitioner.

Now the question which arises at this juncture is whether such recovery is at all permissible in law.

10. At this stage, it will be profitable to reproduce the decision of the Hon'ble Supreme Court in *Rafiq Masih (supra)* observed as follows:

"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."

11. The Hon'ble Division Bench of this Court in *Smt. Kalpita Moitra (Chakladar) (supra)* following the observation of the Hon'ble Supreme Court in *Rafiq Masih (supra)* also observed as follows:

"It is thus evident from the facts discerned from the record that the scale of pay was fixed with effect from 28th September, 2001 on assumption of the post of Headmistress in Khadimpur Girls High School and the issue relating to the wrong fixation of the scale of pay was raised for the first time in the year 2014 after a gap of 13 years. We are unable to countenance the stand of the Trial court that the observations made in Rafiq Masih (supra) are in exercise of powers under Article 142 of the Constitution of India. The Apex Court was considering the seminal point whether the recovery of an excess amount paid to the employee on mistaken fixation of scale of pay is permissible. In determining the aforesaid point, the Apex Court in

unequivocal term laid down the eventualities/situations which render such recovery impermissible. The moment the Apex Court has made a categorical observation in pursuit of deciding the pivotal issue raised before it, it cannot be perceived as the decision rendered in exercise of powers under Article 142 of the Constitution of India. The Apex court in categorical terms held that the recovery in such situations is impermissible which is construed as a law declared by the Apex Court under Article 141 of the Constitution of India and therefore, has a binding force.”

12. A coordinate Bench of this Court has also passed order relying on the decision of *Rafiq Masih (supra)*.
13. Admittedly, the impugned letter has been issued after retirement of the petitioner. Moreover, the overdrawn statement (*Annexure P/16*) shows that the same has been calculated from January 2001. Bearing in mind the observation of the Hon'ble Apex Court and the Hon'ble Division Bench of this Court as above, since an attempt of recovery of the overdrawn amount has been made after the retirement of the petitioner and the period of recovery is in excess of five years, before the order of recovery is issued, the impugned attempt made by the authority concerned for recovery is impermissible under law.
14. Accordingly, impugned letter of Teacher-in-Charge, Kakoti Mahobubia Senior Madrasah dated 26th June, 2025 is set aside.
15. Respondent No.5, District Inspector of Schools (SE), Dakshin Dinajpur is directed to take necessary steps for issuance of Pension Payment Order on the basis of the last pay drawn by the petitioner without deducting the overdrawn amount therefrom on account of alleged

excess payment due to wrong fixation, along with 18 years Career Advancement Scheme (CAS) benefit, if the petitioner is found entitled to, within a period of eight weeks from the date of communication of this order and shall also take necessary consequential steps as required under law.

16. Learned Advocate-on-record for the petitioner is directed to communicate this order to the respondent No.5, the District Inspector of Schools (SE), Dakshin Dinajpur, for necessary compliance.

17. With the above direction, the writ petition being **WPA 15542 of 2025** stands disposed of.

18. Since no affidavits have been called for, the allegation made in the writ petition is deemed to be not admitted.

19. Interim order, if any, stands vacated.

20. All connected applications, if any, stand disposed of.

21. There shall be no order as to costs.

22. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

23. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)