02.02.2026
Sl. No.17
Ct. No.14
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 18071 of 2025

Parbati Das
Versus
The State of West Bengal & Ors.

Ms. Arpita Saha
...for the Petitioner.
Ms. Mahuya Dutta Biswas
...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 the respondent authorities to refund the amount of Rs.1,02,096/- deducted from the gross amount of death cum retirement gratuity as payable to the petitioner's husband along with statutory interest accrued thereon.
3. The petitioner contends that her husband was appointed as an Assistant Teacher in Jagannathpur Primary School, P.O. Khatra, District Bankura. The husband of the petitioner retired from service on superannuation on 31st January, 1993. The pension payment order was issued in favour of the husband of the petitioner on 12th December, 2001. At the time of issuance of pension payment order an amount of Rs.1,02,096/- has been deducted on account of overdrawal in payment. Such deduction is impermissible in law. Hence, this writ petition.

4. Ms. Arpita Saha, learned Advocate for the petitioner submits that deduction of amount on account of overdrawal of pay is impermissible in law. In support of her contention she relies on the decision of Hon'ble Supreme Court in ***State of Punjab and ors. -versus- Rafiq Masih (White Washer) and ors.*** reported in ***(2015) 4 SCC 334***. She seeks for appropriate direction for refund of the overdrawn amount with interest from the date of following the date of retirement of the petitioner's husband till the date of actual disbursement.

5. Despite service, none appears on behalf of the State.

6. Ms. Mahuya Dutta Biswas, learned Advocate, who usually appears on behalf of the State-respondent is requested to appear in this matter. The appearance of Ms. Dutta Biswas be regularised by the competent authority.

7. Learned Advocate for the petitioner is directed to serve a copy of the writ petition along with its annexure upon Ms. Dutta Biswas, learned Advocate for the State.

8. Ms. Dutta Biswas, learned Advocate for the State leaves the matter to the discretion of this Court.

9. The only issue which falls for consideration is whether the deduction made by the respondent authorities at the time of issuance of pension payment order is sustainable or not.

10. In order to examine such issue it would be apposite to reproduce the relevant portion of paragraph 18 of *Rafiq Masih* (supra) :

> *"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 payment. Be that as it may, based on the decisions 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 employees, 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. It is found that such deduction towards overdrawal of pay has been made after eight years of retirement of the petitioner's husband. Bearing in mind the aforesaid proposition of law laid down by the Hon'ble Supreme Court in *Rafiq Masih (supra)*, such deduction is impermissible in law in the facts and circumstances of the case.

12. Though there is delay in making such claim, however, delay *per se* cannot defeat the valuable right of the petitioner. Relief may be granted to the writ petitioner in spite of the delay if it does not affect the right of third

parties. (See: ***Union of India vs. Tarsem Singh*** reported in ***(2008) 3 SCC 648****)*

13. In view of the above, the respondent no.2, the Director of Pension, Provident Fund and Group Insurance, Government of West Bengal, the respondent no.3, the Treasury Officer, Khatra and the respondent no.4, the District Inspector of Schools (PE), Bankura are directed to refund the overdrawn amount of salary of Rs. 1,02,096/- along with interest at the rate of 8% per annum to the petitioner from the date of following the date of retirement of the husband of the petitioner till the date of payment. Such payment shall be made within a period of eight weeks from the date of communication of this order.
14. Learned advocate for the petitioner is directed to communicate this order to the respondent nos.2, 3 and 4 for necessary action.
15. With the above direction, the writ petition being **WPA 18071 of 2025** stands disposed of.
16. Since no affidavits have been called for, the allegation made in the writ petition is deemed to be not admitted.
17. Interim order, if any, stands vacated.
18. All connected applications, if any, stand disposed of.
19. There shall be no order as to costs.
20. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

21. 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.)