

23.03.2026
Court No. 652
Item No. 16
AP

WPA 20847 of 2025

Farhad Hossain

Vs.

The State of West Bengal & Ors.

Mr. Sakti Pada Jana.

.... For the petitioner.

Mr. Joydip Banerjee,
Ms. Mousumi Banerjee.

... For the State.

1. The issue involved in the instant writ petition is whether the petitioner would be eligible for grant of 3 per cent additional increment along with grade pay, as per Rules, consequent upon his appointment as the Headmaster of the respondent/School.

2. The petitioner was initially appointed as an Assistant Teacher in a different school in the same district with effect from May 2, 1990. He has been appointed as the Headmaster of Birasthali High School with effect from July 22, 2019. His appointment was approved by the District Inspector of Schools, Secondary Education, Malda /respondent No. 4, duly with effect from the said date.

3. The school has been upgraded with effect from July, 2012 vide letter dated May 24, 2012. Therefore, the petitioner's pay was refixed as the Headmaster of the said school by allowing him the benefit of 3 per cent additional increments as per Memorandum No. 181-SE(b)/5b-1/9 dated October 08, 2009 and Government

Order No. – 1003-SE(s)/5p-129 dated December 04, 2014.

4. Allegedly, at the fag end of his career and before retirement he has been compelled to deposit to the State Treasury, an amount of Rs.1,57,828/-, as an overdrawn amount by him included in salary which he got pursuant to the benefit of 3 per cent additional increment being granted to him. Allegedly also, that only thereafter, he has been issued the PPO in accordance with the last-drawn salary without consideration of the benefit of 3 per cent additional increment. Thus, the petitioner being aggrieved, has filed the instant writ petition.

5. Mr. Jana, learned advocate who has represented the writ petitioner, has submitted that, the Court's earlier verdict has finally settled the issue as involved in the instant case. In this regard, Mr. Jana has referred to the judgment of this Court in **Subir Kumar Ghosh Vs. State of West Bengal and Others** dated January 15, 2024 in WPA 6217 of 2021 and **Md. Rezaul Karim Vs. The State of West Bengal and Others** dated September 04, 2025 in WPA 22276 of 2024. Apart from this, Mr. Jana, learned advocate has also relied on a Division Bench judgment of this Court dated December 03, 2024 in MAT 1002 of 2022 (**The State of West Bengal and Another Vs. Sri Kali Sadhan Bhattacharjee @ Bhattacharyya & Ors.**)

6. Mr. Jana has submitted that, the Court has finally settled that, in view of the enhanced responsibility of a Head Teacher in a school, upon upgradation of the school, the above benefit cannot be withheld from him/her on the ground of he or she having been appointed prior to upgradation.

7. Mr. Jana has further contended that, according to the ratio of the judgment of the Supreme Court, in ***Rafiq Masih's case [State of Punjab and Others etc. Vs. Rafiq Masih*** reported in ***(2015) 4 SCC 334***, the monetary benefit extended to an employee even in excess of their entitlements, without any fault or misrepresentation at the behest of the recipient, is not eligible to be recovered, considering the respective mutual hardship of the parties, that particularly, at the end of his service and at the time of retirement.

8. Mr. Jana has submitted that, in accordance with the said settled principles of law, the present writ petition may also be disposed of allowing benefit as above in favour of the petitioner and directing the respondent to refund the amount of Rs. 1,57,828/- deposited by the petitioner with the respondent, immediately before his retirement.

9. Mr. Banerjee has represented the State. Mr. Banerjee accepts that, the legal position is unambiguous and well-settled as on date.

10. Mr. Banerjee, learned advocate for the State respondent has handed over to this Court an office Memorandum No. 91/LS/RO dated 20.03.2025 by dint of which the previous order of this Court concerning the similar issue in case of WPA 23867 of 2017 (Kanchiram Sarkar & Ors. Vs. The State of West Bengal) has been given effect. Let that be taken on record.

11. Notification No. 181-SE(b)/5b-1/9 dated October 08, 2009 speaks that, a teaching and non-teaching employee of the Government sponsored/aided institutions shall be entitled to an additional increment in the revised pay structure at the rate of 3 per cent of pay in the pay band and grade pay taken together on every 10 years of continuous and satisfactory service counted from the date of first appointment to the same post. It has also provided that an additional grade pay of Rs.200 over and above the grade pay admissible to the Assistant Headmaster or Headmaster of a higher secondary school is to be allowed according to ROPA, 2009 from the date of appointment to the post.

12. The Court has dealt with similar factual background in other cases, as referred to here by the writ petitioner, as mentioned above. So far as applicability of the provision of grant of additional 3 per cent incremental benefit of the existing basic pay along with additional grade pay at the rate of Rs. 200/- is concerned, it is now settled that upon the school being

upgraded and the Headmistress/Headmaster having discharged further responsibilities in accordance with the status of the upgraded school, should be duly considered to have dispensed with the condition of discharging higher responsibility as per the Rules provided under the Government notification. Therefore, regarding the petitioner's eligibility as to the said amount from the relevant date, cannot be disputed. As a matter of fact in this case, the petitioner has been duly granted the applicable benefit as above earlier and he enjoyed the same throughout his service career.

13. It is a fact that, at the fag end of his career and immediately before retirement, he has deposited in T.R. challan a sum of Rs.1,57,828/- with the treasury which amounts to the accumulated value of 3 per cent additional increment with grade pay having enjoyed by him throughout his career. It appears that, only after his depositing such amount of money, the petitioner was allowed to be granted with the Pension Payment Order and further he was granted pension in accordance with the last-drawn salary without taking into account the said benefit.

14. The Court has time and again held in various cases that, withdrawal of a portion of salary drawn by the petitioner at the fag end of his career and like as a pre-condition for granting his pension is not to be sustained in view of the ratio decided in the case of

Rafiq Masih (supra) by the Hon'ble Supreme Court. The relevant portion thereof may be quoted as hereinafter :-

“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.”

15. It was similarly held by the Hon'ble Division Bench of this Court in the case of **Kali Sadhan Bhattacharya (supra)**.

16. There is nothing on record to come to any decision that, even if there was excess payment, the same was attributable to the petitioner himself. Though in this case, the Court has found the payment of 3 per cent additional increment with grade pay to the petitioner not

to be an excess payment made to him, but him to be lawful entitlement thereto. Be that as it may, the Supreme Court in ***Rafiq Masih's case (supra)*** says that, considering the respective hardships to be suffered by both the parties in case of any excess payment having really been made to the employee, it is not proper and equitable to direct recovery thereof particularly, at the end of his/her career and as a pre-condition for grant of pension. The same principle/ratio squarely applies in case of the present petitioner too. The petitioner having been once allowed the benefit of 3 per cent additional increment and grade pay, has enjoyed the same throughout his service life. It appears from the discussion as above that, the same has been erroneously and arbitrarily withdrawn from him immediately before his superannuation and he has ultimately been granted pension on the basis of last-drawn salary without consideration of such benefit. This is against the law of the land. Hence, cannot be sustained.

17. For the reasons all as above, the instant writ petition should succeed.

18. The writ petition No. WPA 20847 of 2025 is allowed with the following directions:-

- i) Let the respondent No. 3/Commissioner of School Education, West Bengal grant 3 per cent additional

increment in favour of the petitioner with effect from July 22, 2019;

ii) Respondent No. 4/D.I. shall take all consequential steps for refixation of his pension;

iii) The respondent Nos. 4 and 5 are directed to take all follow up steps in accordance with law;

iv) The respondents are directed to immediately refund the amount of Rs.1,57,828/- deposited by the writ petitioner in the Treasury, on May 15, 2024;

v) The petitioner should be issued with the revised Pension Payment Order within a period of 04 (four) weeks from the date of communication of the order;

vi) Arrear pension shall be granted to the petitioner within a maximum period of 08 (eight) weeks from the date of communication of copy of this order.

19. With the directions as above, the instant writ petition is disposed of.

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

(Rai Chattopadhyay, J.)