24.03.2026
Sl. No.31
Ct. No.14
gd

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA/20926/2025
DAMAYANTI PANJA
VS
STATE OF WEST BENGAL AND ORS.

Mr. Banshi Badan Maity
...for the Petitioner.

Ms. Susmita Biswas Chowdhury
...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 alleged overdrawn amount of Rs.55,880/- together with interest at the rate of 18% per annum from the date of retirement of the concerned employee till the date of actual payment.
3. The petitioner contends that her husband was a Head Teacher of Purba Santeswarpur Primary School, P.O.-Mirgoda, District-Purba Medinipur. The petitioner's husband retired from service on superannuation on 30th June, 1996 and expired on 12th December, 1996. The pension payment order was issued on 3rd September, 2001 and upon perusal of the same the petitioner came to know that an amount of Rs.55,880/- has been deducted as overdrawal in pay.

Such deduction is impermissible in law after the retirement of the employee. Hence, this writ petition.

4. Mr. Banshi Badan Maity, learned Advocate for the petitioner relying on the decision of the Hon'ble Supreme Court in ***State of Punjab & Ors. versus Rafiq Masih (White Washer) & Ors.*** reported in ***(2015) 4 SCC 334*** submits that it is impressible in law to recover the overdrawn amount from the employee after his/her retirement. He seeks for appropriate order.

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

6. Ms. Susmita Biswas Chowdhury, learned Advocate, who usually appears on behalf of the State-respondent is requested to appear in this matter. The appearance of Ms. Biswas Chowdhury 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. Biswas Chowdhury, learned Advocate for the State.

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

9. Upon hearing the learned advocates for respective parties, the only issue which falls for consideration is whether the respondent authorities were justified in deducting the overdrawn amount after the retirement of the employee or not.

10. In this regard, it would be apposite to reproduce the relevant paragraph no.18 of the decision in *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 employers, would be impermissible in law:*
>
> *(i) Recovery from the employees belonging to Class II and Class IV service (or Group C and Group D service).*
>
> *(ii) the retired Recovery from 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 (v) 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. It is found that the petitioner's husband retired from service on superannuation on 30th June, 1996 and expired on 12th December, 1996. Subsequent thereto, on 3rd September, 2001 the petitioner came to know that an amount of Rs.55,880/- has been deducted as overdrawal in pay. Bearing in mind the proposition of Hon'ble Supreme Court in *Rafiq Masih (supra)* such deduction made after almost five years of retirement of the employee, is impermissible in law.

12. Accordingly, the respondent No.2, Director of Pension and Provident Fund and Group Insurance, Government of West Bengal and the concerned Treasury Officer are directed to release the said

amount of Rs.55,880/- together with interest @ 8% per annum in favour of the petitioner from the date following the date of retirement of the concerned employee till the date of actual payment. Such payment be made within a period of 12 weeks from the date of communication of this order.

13. With the above direction, the writ petition being **WPA 20926 of 2025** stands disposed of.

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

15. Interim order, if any, stands vacated.

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

17. There shall be no order as to costs.

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

19. 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.)