

05.05.2026
Sl. No.30
Ct. No.14
gd

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

WPA/21907/2025
MIRA SUR
VS
STATE OF WEST BENGAL AND ORS.

Mr. Sourav Mitra
Mr. Banshi Badan Maity

...for the Petitioner.

Mr. Raja Ram Banerjee

...for the State.

1. Statement of facts filed by the State furnished by District Inspector of Schools (PE), Hooghly dated 23rd April, 2026 is taken on record.
2. By the present writ petition, the petitioner seeks direction upon the respondent authorities for refund of alleged overdrawn amount of Rs.58,048/- together with interest at the rate of 18% per annum from the date following the date of retirement of the concerned employee till the date of actual disbursement.
3. The petitioner contends that her husband was an Assistant Teacher of Simla Haricharan Primary School, P.O.-Chinsurah R.S, District-Hooghly. The petitioner's husband retired from service on superannuation on 31st July, 1994 and expired on 7th April, 2004. The pension payment order was issued on 17th January, 2002 deducting an amount of Rs.58,048/- towards overdrawn in pay. Such

deduction towards overdrawn in pay is impermissible in law. Hence, this writ petition.

4. Mr. Sourav Mitra, learned advocate for the petitioner submits that alleged overdrawn in pay is impermissible in law since it has been made after retirement of concerned employee. To buttress his contention relies 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***. He also relies on the decision of a Co-ordinate Bench of this Court passed in ***Kohinoor Pal versus The State of West Bengal & Ors. (Re:11995 of 2023)***.
5. On the contrary Mr. Raja Ram Banerjee, learned advocate for the State submits that there is long delay of 24 years in seeking for overdrawal. The deduction towards overdrawn in pay has been made in the year 2002. As such the petitioner cannot claim refund of the overdrawn in pay at this belated stage.
6. Upon hearing the learned advocates for respective parties, the only issue which falls for consideration is whether such deduction towards overdrawn in pay is impermissible in law.
7. In order to examine the aforesaid issue, 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) 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."

8. Reverting back to the fact of this case, it is found that the husband of the petitioner retired from service on superannuation on 31st July, 1994. After his retirement pension payment order was issued on 17th January, 2002 deducting an amount of Rs.58,048/- towards overdrawn in pay. Following the decision of *Rafiq Masih (supra)* such deduction is impermissible in law.
9. Although, the prayer for refund of overdrawal in pay is strenuously challenged by the learned advocate for the State respondents on the ground of delay, however, delay *per se* cannot disentitle the petitioner to the prayers made in the writ petition, when the same has not given rise to any third party right. It may be profitable to note that the Hon'ble Apex Court observed in its decision passed in ***Union of India versus Tarsem Singh*** reported in **(2008) 3 SCC 648** that relief may be granted to the writ petitioner,

in spite of delay, if it does not affect the right of third parties.

10. Accordingly, the respondent No.2, Director of Pension and Provident Fund and Group Insurance, Government of West Bengal and respondent no.4, Treasury Officer, Hooghly-I, are directed to release the said amount of Rs. 58,048/- to the petitioner together with interest @ 8% per annum from the date of deduction i.e. 17th January, 2002 till the date of actual disbursement. Such payment shall be made within a period of six weeks from the date of communication of this order.
11. With the above direction, the writ petition being **WPA 21907 of 2025** stands disposed of.
12. Since no affidavits have been called for, the allegation made in the writ petition is deemed to be not admitted.
13. Interim order, if any, stands vacated.
14. All connected applications, if any, stand disposed of.
15. There shall be no order as to costs.
16. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
17. 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.)