S/L 11
10.02.2026
Court. No. 25
suvayan

WPA 28420 of 2023

Srimanta Kanrar
Vs.
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Sk. Imtiaj Uddin

...for the petitioner.

1. The petitioner has filed the present writ application praying for recalling/withdrawing the impugned observation made in Annexure P2 and a direction upon the respondents to disburse the due pensionary benefits of the petitioner including the arrear pension, gratuity in terms of the last pay actually drawn by the petitioner.
2. Learned counsel for the petitioner submits that the petitioner was working as headmaster in Baniban Jadurberia Vidyapith. In the year 2007, the Additional District Inspector of Schools (S.E.), Uluberia, Sub-Division Howrah has fixed the pay of the petitioner of Rs. 9,650/-. Subsequently, by an order dated August 20, 2007 the order dated May 23, 2007 was corrected by way of corrigendum.
3. The petitioner retired on September 30, 2023. After the retirement of the petitioner, the authorities have processed the pension papers and it was observed that the pay of the petitioner should have been Rs. 8,275/-in lieu of Rs. 8,550/-. It was further observed that the concerned authorities are requested to review and clarify the present pay statement. Over-drawl of pay may be

calculated to take further necessary action all other relevant parts may be corrected accordingly.

4. The petitioner is aggrieved with the said observation on the ground that the petitioner have been granted the scale of pay in the year 2007 and till the date of retirement of the petitioner was getting the said scale. After the retirement of the petitioner, the respondents/authorities have observed that the pays of the petitioner should be Rs. 8,275/- in lieu of Rs. 8,550/- and over-drawl pay may be calculated for taking further necessary action.

5. Mr. Bari, learned advocate appearing for the petitioner submits that the petitioner has retired on September 30, 2023. After the retirement, the respondents cannot recover any excess payment made by the authorities to the petitioner. Mr. Bari submits that it is not the case of the authority that the petitioner has drawn the higher pay by misrepresenting the respondents/authorities. He further submits that the petitioner's pay was fixed as per the order passed by the competent authority. He further submitted that the similar question was arose before the Hon'ble Division Bench of this Court in the case of ***Smt. Kalpita Moitra (Chakladar) vs. The State of West Bengal & Ors.*** passed in ***FMA 777 of 2023*** dated November 14, 2024 wherein the Hon'ble Division Bench of this Court relying upon the case of ***State of Punjab & Ors. vs. Rafiq Masih (white Washer) & Ors.*** reported in ***(2015) 4 SCC 334***, the Hon'ble Division Bench has directed the respondents/authorities

to issue the pension order on the basis of the scale of pay lastly drawn without deducting any amount therefrom on account of alleged excess payment due to wrongful and/or mistaken fixation to pay.

6. Mr. Bari submits that the case of the petitioner is also covered with the judgment passed by the Hon'ble Division Bench of this Court and the case referred by the Hon'ble Division Bench in the case of ***Rafiq Masih (Supra)***.

7. In spite of service of notice none appears on behalf of the respondents/authorities. Lastly the petitioner has served notice to the respondents/authorities on February 9, 2026 but none appears on behalf of the respondents/authorities.

8. This Court finds that by an order dated May 23, 2007 the authorities have passed the following order:

> *"With reference to the above the undersigned has to inform him that Srimanta Kancar, M.A., B.Ed. drawing pay as Asstt. Teacher Rs. 8050/- till 31.7.03 in the scale of pay 6000-12000/- i.e. his last date of working as Asstt. Teacher and his pay fixed as Headmaster 2.8550/- w.e.f. 01.8.2003 in the scale of pay 8000-13500/- is now allowed to enjoy two addl. increments in the same scale of pay as per G.O.Ne.185-SE (H), dated 04.5.2000 w.e.f. 20.07.06 due to upgradation as Higher Secondary School and his pay has been fixed @ Rs.9650/- from the same date. His next increment will fall due on 01.08.2004."*

9. Subsequently, by an order dated August 20, 2007 the authorities have corrected the said order which reads as follows:

> *"Please read "Srimanta Kanrar, M.A., B.Ed., drawing pay as Headmaster of Jr. High School Rs. 8050/- till 31.7.03 in the scale of pay 6000-12000/- i.e. the last date of working as Headmaster of Jr. High School" instead of "Srimanta Kanrar, M.A., B.Ed., drawing pay as A.T. Rs.8050/- till 31.7.03 in the scale of pay 6000-12000/- i.e. the last date of working as A.T." in the approval of re-fixation of pay Vide A.D.I/S(SE), Uluberia's Memo No.443/ U/ M, dated 23.05.07."*

10. The respondents/authorities have fixed the pay of the petitioner in 2007 and since then, the petitioner has drawn the particular pay scale. There was no objection from any authority for drawing the salary by the petitioner in a particular pay scale. The petitioner retired from the service on September 30, 2023. There is no allegation that the petitioner has misrepresented the authority and drawn the excess payment. From the impugned letter dated October 30, 2023 it is found that at the time of calculation of the pension after the retirement of the petitioner, it was found that the pay scale of the petitioner has been wrongly fixed as pay Rs. 8,550/- instead of Rs. 8,275/-. Accordingly, it was observed that the over-drawl may be calculated to take further necessary action.

11. In the case of *Rafiq Masih (supra)* the Hon'ble Supreme Court held 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."

12. In the present case the petitioner was the headmaster of the school and the authorities have fixed the scaly of pay in the year 2007. The petitioner has retired on September 30, 2023. After the retirement the respondents/authorities at the time of calculating the pensionary benefit have observed that the pay of the petitioner has wrongly fixed Rs. 8,550/- instead of Rs. 8,275/-.

13. Considering the above this Court finds that there is no fault on the part of the petitioner for fixing of the pay scale. There is no misrepresentation of the petitioner for drawing the higher pay scale. Now the petitioner has been retired as headmaster of the school. Thus the judgment passed by the Hon'ble Supreme Court in the case of ***Rafiq Masih (supra)*** and the Hon'ble Division Bench of this Court in the case of ***Smt. Kalpita Moitra (Chakladar) (supra)*** and are squarely applicable in the present case. It is settled law that after the retirement of the Government servant, if the Government servant has drawn the high salary without any misrepresentation or any fraud upon the authorities and the authorities have fixed the pay scale inadvertently, no amount can be recovered from the retired employee as per the guidelines framed by the Hon'ble Supreme Court in the case of ***Rafiq Masih (supra)***.

14. Considering the above, this Court finds that the observation in the impugned order dated October 30, 2023 wherein there is an observation for over-drawl may be calculated to take further necessary action is against the settled position of law.

15. Accordingly, the said observation is set aside and quashed.

16. The learned counsel for the petitioner submits that on September 30, 2023 the petitioner is retired from his service but only after filing of the writ petition and as per

the order passed by this Court the authorities has issued the admissible pension to the petitioner.

17. In view of the above, the respondents/authorities are directed to issue the revised Pension Paper Order on the basis of the scale of pay lastly drawn without deducting any amount therefrom on the account of alleged excess payment due to wrong and mistake fixation pay by the authority.
18. The respondents are directed to complete the said exercise within a period of six weeks from the date of communication of this order.
19. WPA 28420 of 2023 is disposed of.
20. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.)