

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)

Present:

The Hon'ble Justice Smita Das De

W.P.A. No. 20672 of 2022

Sri Tarun Kanti Naskar
Vs.
The State of West Bengal & Others.

For the petitioner : Mr. Taraprasad Halder

For the State : Mr. Supriyo Chattopadhyay
: Ms. Iti Dutta

For the WBCSSC : Dr. Sutanu Kr. Patra
: Ms. Supriya Dubey

Reserved on : **13/06/2025**
Judgment on : **20/06/2025**

Smita Das De, J.:-

1. The petitioner has preferred the present petition with the prayer to quash the Memo No. 99/ADAC/Bkpore/Vetting dated September 19, 2019 issued by the Additional Director (Accounts), S.E. Barrackpore, Shiksha Bhawan, Ground Floor, North 24 Parganas, being the respondent No. 4 herein. The aforesaid Memo No. 99/ADAC/Bkpore/Vetting dated September 19, 2019 was issued for recovery of overdrawn amount to the Government exchequer to the tune of Rs. 21,770/- being paid as on July 1, 2019 Rs. 20,940/- inclusive of

one increment of Rs. 630/- and a difference of Grade Pay of Rs. 200/- after completion of 18 years of service under the pay scale of Rs. 4500 – 9700/- in place and stead of Rs. 4650-10175/- as mentioned in the Advertisement published in a Newspaper dated November 1, 1999.

2. Apropos the facts of the case is that the petitioner having educational qualification Diploma in Mechanical Engineering and participated in the Second Regional Level Selection Test, 1999 conducted by the West Bengal Central School Service Commission for the purpose of appointment of Assistant Teacher in recognized Non-Government aided Higher Secondary School/ High School / Junior High School/ Senior Madrasa / High Madrasa / Junior High Madrasa in West Bengal with an eligibility criteria for appointment to the post of Assistant Teacher in Work Education. An advertisement was published by the West Bengal Central School Service Commission dated November 1, 1999 mentioning thereby the scale of pay for a pass category candidate to be Rs. 4650-10175/-. Thereafter the petitioner being an eligible candidate for the post of Assistant Teacher in Work Education group was called for a written test examination held on February 27, 2000. Subsequently being a successful candidate in the written test examination, he was called for an interview on November 23, 2000, and was finally selected for appointment to the post of Assistant Teacher in Work Education Group, treating him as a pass degree holder and recommended his

name for appointment as an Assistant Teacher in Work Education Group in Alam Bazar Arya Vidyalaya Junior High School on February 1, 2001. On the basis of the recommendation made by the West Bengal School Service Commission, Southern Region the Secretary to the Managing Committee of Alam Bazar Arya Vidyalaya Junior High School, Kolkata, issued Appointment Letter in favour of the petitioner on March 5, 2000 against a regular vacancy to the post of an Assistant Teacher in Work Education Group. Subsequently, after issuance of such appointment letter, the petitioner joined on March 8, 2001 and accordingly the school authorities after his joining forwarded all the papers to the District Inspector of School (S.C.), Barrackpore for approval of his appointment. Thereafter the District Inspector of School (S. C.) Barrackpore granted approval of appointment of the petitioner to the post Assistant Teacher in Work Education Group treating him as a pass degree holder vide Memo No. 334/G dated July 13, 2001.

- 3.** It is pertinent to mention here, that from the Academic Session, 2001-2002 the School was upgraded from Junior High School to High School and the petitioner also passed his B. A. Honours examination on Sociology in the year 2008 and M. A. examination in Education in the year 2012. Finally the petitioner passed the B. Ed. Examination through distant mode after obtaining prior permission from the District Inspector of School (S. C.) Barrackpore.

- 4.** After appointment of the petitioner to the post of Assistant Teacher in Work Education Group he was granted revised scale of pay as per ROPA from time to time and accordingly his pay was fixed in the revised scale of pay corresponding to the existing scale of pay. After completion of 10 years of service on March 7, 2011 one increment in the existing scale of pay was allowed to him as per ROPA 2009. After completion of 18 years of service he approached to the School authorities for taking necessary steps for the Career Advancement Scheme under ROPA 2009 with effect from July 1, 2019 and thereafter the Managing Committee took a decision and forwarded the proposal to the District Inspector of School on March 11, 2019 for vetting. After receiving all the papers, the District Inspector of School (S.E.) forwarded all the papers to the office of the Joint Director (Accounts) (S.E.) Directorate Accounts (Education) on August 6, 2019 for vetting 18 years of service benefit under Career Advancement Scheme. Thereafter the Joint Director (Accounts) (S.E.) Barrackpore, North 24 Parganas issued a letter on September 19, 2019 which is the subject matter of challenge in the instant Writ Petition.
- 5.** In view of the aforesaid backdrop the following issues arises for consideration.

 - i.** Whether government employee received monetary benefits exceeding the legitimate entitlement due to administrative mistake rather than

fraudulent representation can be recovered from the employees by the employers?

- 6.** The Learned Advocate representing the petitioner submits that by passing the Order dated September 19, 2019 the concerned authority has denied granting of 18 years service benefit. It was further submitted that the action of the respondent No. 4 curtailing the existing facilities of pass graduate scale of pay (Rs. 4650-10175/-) since the date of his joining in terms of the Advertisement published in the newspaper dated November 19, 1999 and offering scale of pay of Rs. 4500-9700/- from the very beginning of his joining to the post of Assistant Teacher in Work Education is arbitrary in nature and not tenable in the eye of law. It is further argued by the petitioner that no notice or opportunity of hearing was provided to the petitioner before passing such order and the order impugned has been passed in complete violation of principles of natural justice and constitutional fairness.
- 7.** Per Contra, it has been strenuously argued by the State respondent that the Assistant Teacher having educational qualification diploma in engineering, working as Assistant Teacher in Work Education subject, is entitled to get scale of pay as per ROPA 81, ROPA 90 and ROPA 98 such teachers are entitled to get scale of pay Rs. 425-1050/-, Rs. 1390-2970/- and Rs. 4500-9700/- respectively. It was further submitted that the petitioner who was appointed on March 8, 2001 as Assistant

Teacher in Work Education having qualification Diploma in Mechanical Engineering, his initial pay was mistakenly fixed as Rs. 4650/- per month under pay scale of Rs. 4650-10175/- instead of Rs. 4500/- per month under pay scale Rs. 4500-9700/- w.e.f. March 8, 2001 by the then District Inspector of School (S.C.) Barrackpore. The said mistake was identified by the Office of the Additional Director of Accounts (A.C) Barrackpore on September 19, 2019 at the time of vetting of pay fixation for completion of 18 years of service of the petitioner vide Memo No. 99/ADAC-Bkpore/Vetting dated September 19, 2019. It was further submitted that as per the observation of the Additional director of Accounts, Secondary Education, Barrackpore the school authority was asked on September 27, 2019 to rectify the same and requested to take consequential steps for refund of the overdrawn amount. Thereafter from the available records it appeared that the teachers with the diploma in engineering / work education shall come under the purview of revised scale of pay Rs. 4500-9700/- in terms of ROPA 1990.

- 8.** After hearing the rival contention of the parties I am of the considered view that from perusal of the records it is amply clear that the petitioner was granted service benefits from time to time by the Department itself without any demand made on the part of the petitioner and now a decision has been taken by the respondent to recover the excess salary paid to the petitioner. Recovering over payment is against the

fundamental principle of justice, equity and good conscience affecting the citizens livelihood. In many instances it has been found that errors have been persisting for years together before being deducted, during which time, employee had relied on the additional payments for their livelihood and financial planning. The Court recognized that employees who receive such payments in good faith, without knowledge of the administrative error, should not be subjected to harsh recovery measures that could cause undue hardship. It is a well settled proposition of law as held in the case of **State of Punjab & Others Vs. Rafiq Masih: 2015(4) SCC 334 & Bare Lal Upadhyay Vs. State of U.P. and Others** decided on January 14, 2018 passed in Writ-A. No. 14196 of 2007 in which it was observed that in case due to wrong fixation of pay scale, if excess payment is made, the same cannot be recovered from the service employees. The relevant portion of the judgment of **Rafiq Masih (supra)** is reproduced hereinbelow.

"The judgment of the Supreme Court in Rafiq Masih (supra) is not confined to cases where there is wrong fixation of salary and as a result whereof some excess amount was paid to an employee. In fact, the Supreme Court had decided a batch of petitions where the larger issue was whether an employer is entitled to recover monetary benefits mistakenly given to the employee. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward

revision of pay-scales or for having been granted allowances, for which the concerned employee was not authorised. It has been held that in all such cases, the employer would not recover the amount provided the excess payment was not attributable to any fraud or misrepresentation by the employee. The categories which have been delineated by the Supreme Court in paragraph 12 of the judgment are as follows :-

"(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year of the order of recovery.

(iii) Recovery from 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 recovery."

The Supreme Court, on a conspectus of different situations arising before it, specified four different categories where it would be harsh and iniquitous to permit recovery of excess payment of the monetary benefits. While specifying these categories, the Supreme Court was conscious of the fact that it was not possible to account for all eventualities. Accordingly, a fifth category was carved out where it was left to the wisdom of the Court not to permit recovery if it comes to the conclusion that it would be harsh, arbitrary or iniquitous. "

9. A similar view was taken by the Hon'ble Supreme Court in the case of **Thomas Daniel Vs State of Kerala & Others 2022 Live Law (SC) 438** by observing that relief against the recovery is granted not because of any right of the employees, but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. Particularly, when an employee had no role for the excess payment made to him by the employer.
10. In this view of the matter and especially in view of paragraph 12 of the Judgment of the Hon'ble Apex Court passed in the case of **Rafiq Masih (supra)** the Court is of the firm opinion that such a recovery is bad and not sustainable in the eye of law, hence the order of recovery dated September 19, 2019 passed by the respondent No. 4 is liable to be set aside and the same is hereby set aside.
11. With the above observations and directions, the writ petition being **WPA No. 20672 of 2022** is allowed and disposed of. No order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

(Smita Das De, J.)