

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (C) No. 687 of 2018

Shri Thokchom Indrakumar Singh, aged about 61 years, S/o (Late) Th. Joykumar Singh, resident of Keishampat Thokchom Leikai, P.O. and P.S. Imphal, District Imphal West, Manipur.

... Petitioner

-Versus-

- 1.** The Accountant General, Office of the Accountant General (A&E), Manipur, P.O. and P.S. Imphal, Imphal West District, Manipur – 795001.
- 2.** The State of Manipur represented by the Secretary (Youth Affairs & Sport Department, Government of Manipur, Manipur Secretariat, P.O. and P.S. Imphal, Imphal West District, Manipur – 795001.
- 3.** The Director (Youth Affairs & Sport Department), Government of Manipur at Khuman Lampak Sports Complex, P.O. Imphal, P.S. Porompat and Imphal East District, Manipur – 795010.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Mr. Ch. Robinchandra, Advocate
For the respondents	::	Mr. S. Suresh, Advocate & Mr. Phungyo Zingkhei, Deputy GA
Date of Hearing	::	17-08-2023
Date of Judgment & Order	::	12-09-2023

JUDGMENT & ORDER

[1] Heard Mr. Ch. Robinchandra, learned counsel appearing for the petitioner, Mr. S. Suresh, learned counsel appearing for the respondent No. 1 and Mr. Phungyo Zingkhei, learned Deputy GA appearing for the respondents No. 2 and 3.

In the present writ petition, the petitioner is challenging the gratuity payment order dated 23-01-2018 issued by the Office of the Accountant General (A&E), Manipur ordering for recovery of a sum of Rs. 46,075/- from the gratuity payable to the petitioner allegedly on account of over-payment of pay and allowances to the petitioner and also praying for issuing a direction to the respondents to refund the said deducted gratuity amount of Rs. 46,075/-.

[2] The case of the petitioner is that the petitioner retired from service as UDC in the Youth Affairs & Sports Department, Government of Manipur, on attaining the age of superannuation w.e.f. 31-10-2017. After the retirement of the petitioner, the Office of the Accountant General, Manipur, issued a gratuity payment order dated 23-01-2018 for payment of a sum of Rs. 5,97,045/- as retirement gratuity as admissible under the Manipur Civil Services (Pension) Rules, 1977. In the said order, it was also mentioned that a sum of Rs. 46,075/- on account of overpayment of pay and allowances may be recovered.

[3] Mr. Ch. Robinchandra, learned counsel appearing for the petitioner submitted that the petitioner is entitled to enjoy the full gratuity amount of Rs. 5,97,045/- as he never committed any act of misconduct during his service career. It has also been submitted that if there was any fault on the part of the petitioner regarding drawing of his monthly pay and allowances, the concerned authorities should have informed him in time to rectify such mistake and that if the petitioner had drawn some excess amount due to the miscalculation by the authorities without any fault on his part, the authorities are not permitted to recover the excess withdrawn

amount from his retirement gratuity amount and the concerned authorities should not be permitted to take advantage of their own mistakes.

[4] The learned counsel further submitted that no prior show-cause notice was issued to the petitioner in connection with the deduction of Rs. 46,075/- on the alleged ground of recovery of overpayment of pay and allowances and that such action of the respondents amounts to violation of the principle of natural justice and as such, the impugned order is liable to be quash and set aside.

The learned counsel for the petitioner also submitted that the issue raised in the present writ petition is squarely covered by the order dated 06-01-2010 passed by the Gauhati High Court, Imphal Bench, in WP(C) No. 783 of 2008. The operative portion of the said order are as under:-

“5. The reasons for deduction can be ascertained from the affidavit filed by the respondent No.3, wherein it was stated that sometime in the late 1970's or early 1980's, the petitioner was allowed to enjoy higher pay scale due to application of wrong regulation of pay which was detected only when the amount due as gratuity was sought to be released. It is not the case of the respondents that the petitioner's deceased husband committed any fraud or involved in contributing/ attributing to the alleged excess payment. The simple case of the respondents is that due to wrong application of regulation for pay at one point of time, a voluntary act of the respondents which was not at all controlled by the petitioner's late husband, the excess payment has been caused. There are two schools of thought with regard to excess payment and recovery thereto. One school of thought says that if excess payment is impermissible by law/rules, the same is liable to be recovered and another school of thought says that if the beneficiary has not contributed/attributed to anything towards excess payment by way of misrepresentation or fraud, such excess payment cannot be recovered simply for the fact that the same was caused due to mis-calculation or mis-application of certain rules/regulations.”

“6. The Apex Court in (2009)3 SCC 475 (Syed Abdul Qudir and others Vs. State of Bihar and others) after having considered various conflicting decisions passed by the Apex Court in this regard, have finally settled the issue by laying down the following:

- (a) If excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, excess payment is not recoverable.***
- (b) If such excess payment was made by the employer by applying wrong principle for calculating the pay and allowances or on the basis of a particular interpretation of rules or order which subsequently found erroneous, excess payment is not recoverable.”***

“7. In the instant case, as discussed above, the excess payment is admittedly due to wrong application of regulation of pay to which the petitioner's late husband had no role to play and as such, no recovery of any excess payment can be made from the gratuity account of the petitioner's husband.”

“8 Thus, in view of the affirmative decision of the Apex Court settling at rest the two earlier conflicting views on this issue, this Court has no option but to quash the impugned communication dated 10-6-2008 issued by the office of the Senior Deputy Accountant General (A&E), Manipur, Imphal (Annexure-A/6). Consequent upon quashing of the communication dated 10-6-2008, respondents are directed to refund the amount of Rs.1,48,318.00/- which was deducted from the gratuity account the petitioner's late husband within a period of 2 months from the date of receipt of a certified copy of this order. If the amount, as directed above, is not paid to the petitioner within the time stipulated hereinabove, the unpaid amount shall carry an interest @ 7% per annum.”

[5] Mr. S. Suresh, learned counsel appearing for the respondent No. 1 submitted that the petitioner was appointed to the post of LDC w.e.f. 01-02-1988 and on completion of 12 years of service, he was granted ACP-I in the scale of pay of Rs. 4,000 - 100 - 6,000/- and his pay was fixed at Rs. 4,400/- as on 01-07-2005 (effective date of ACP). It has also been submitted that on introduction of the Manipur Services (Revised Pay) Rules, 2010, the pre-revised pay scale of Rs. 4,000 - 6,000/- was revised to the Pay Band-I of Rs. 5,200 - 20,200/- with Grade Pay of Rs. 2,400/- w e.f. 01-01-2006. The learned counsel further submitted that

as per Rule 7(A)(i) and (iii) of the ROP, 2010, fixation of initial pay in the revised pay structure should be made by multiplying the existing Basic Pay as on 01-01-2006 by the factor of 1.86 and rounding of the resultant figure to the next multiple of 10 + the Grade Pay corresponding to the revised pay scale. According to the respondent No. 1, the correct calculation of the petitioner's pay scale should be as under:-

“Pay as on 01-01-2006 Rs. 4,400/- X 1.86 = Rs. 8,184, rounded to Rs. 8,190 + 2,400 (GP) = Rs. 10,590/-”

[6] Mr S. Suresh, learned counsel submitted that the pay of the petitioner was fixed at Rs. 8,370/- + 2,400/-(GP) = Rs. 10,770/-, i e., Rs. 180/- in excess, which is contrary to the ROP, 2010, thereby leading to overpayment. The respondent No. 1 has shown the pay fixation of the petitioner in the chart marked as Annexure - X/4 to the counter affidavit filed by the respondent No. 1. For ready reference, the said pay fixation chart is reproduced hereunder:-

**“Pay fixation in respect of Th. Indrakumar Singh, Retd. UDC
of Youth Affairs and Sports Department**

AG Office	Department
Pay as on 01.01.2006 – Rs. 4,400 (Pre-revised pay scale of Rs. 4,000-100-6,000)	Pay as on 01.01.2006 – Rs. 4,400 (Pre-revised pay scale of Rs. 4,000 -100-6,000)
Pay fixation – 4,400 x 1.86 (Revised pay in PB-I of Rs. 5,200 20,200+2,400(GP) = Rs. 8.184 rounded to Rs. 8,190/-	Pay fixation - 4,500 x 1.86 = 8,370/- * Reason for Taking 4,500/- instead of 4,400 not known.
Pay fixed as on 01.01.2006 – Rs. 8,190 + 2,400 (GP) = Rs. 10,590/-	Pay fixed as on 01.01.2006 = Rs. 8,370 + 2,400 (GP) = Rs. 10,770/-

[7] It has been submitted by Mr. S. Suresh, learned counsel that to make recovery of Government dues as per existing pension rules is the bounded duty of the respondent No. 1 and that the amount of Rs. 46,075/-

was deducted from the retirement gratuity of the petitioner as overpayment of pay and allowances arising due to irregular fixation of pay with the consent of the petitioner. In this regard, the learned counsel draw the attention of this court to the consent certificate given by the petitioner, which is enclosed as Annexure - X/1 to the counter affidavit filed by the respondent No 1, which reads as under:-

“CONSENT CERTIFICATE

This is to certify that I have no objection for deduction of any Government dues from my Retirement Gratuity or from other pension benefits that are payable to me.

Sd/-
(Th. Indrakumar Singh)
UDC (retired)
Youth Affairs & Sports, Manipur”

[8] Mr. S. Suresh, learned counsel appearing for the respondent No. 1 submitted that the order dated 06-01-2010 passed by the Gauhati High Court, Imphal Bench in WP(C) No. 783 of 2008 and relied on by the counsel for the petitioner will have no application in the facts of the present case, inasmuch as, in the present case, the petitioner himself has agreed to the deduction by submitting Consent Certificate. The learned counsel further submitted that the orders dated 27-07-2018 passed by this court in WP(C) No. 186 of 2018, WP(C) No. 258 of 2018 and WP(C) No. 259 of 2018 squarely covers the issues raised in the present petition and that such orders passed by a coordinate bench of this court is binding to this court. In support of his contention, the learned counsel cited the judgments passed by the Hon’ble Apex Court in the case of **“Jai Singh & ors. Vs. Municipal Corporation of Delhi & anr.”** reported in **(2010) 9 SCC 385** (para. 37) and **“P. Singaravelan & ors. Vs. District Collector, Tiruppur & DT & ors.”** reported in **(2020) 3 SCC 133** (para. 18.2), wherein the Hon’ble Apex

Court has held that to maintain judicial discipline and decorum and to avoid conflicting views taken by coordinate bench of the same court, the subsequent bench would follow the earlier views of the coordinate bench and that if the subsequent bench is in disagreement with the holding of an earlier coordinate bench, in the interest of judicial discipline, the matter should be referred to a larger bench for its consideration.

[9] Mr. S. Suresh further submitted that in the present petition, the petitioner did not disclosed the existence of the Consent Certificate given by him and approached this court by concealing such material evidence to obtain favourable orders and on this count alone, the present petition is liable to be dismissed. In support of his contention, the learned counsel cited the judgment of the Hon'ble Apex Court in the case of "**K D. Sharma Vs. Steel Authority of India Ltd.**" reported in (2008) 12 SCC 481, wherein it has been held as under:-

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim”.

“38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot d be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts

are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

"39. If the primary object as highlighted in Kensington Income Tax Commrs. is kept in mind, an applicant who does not come with candid facts and "clean breast cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

[10] I have heard the rival submissions of the learned counsel appearing for the parties at length and also carefully examined the materials available on record. In the present case, the respondent No. 1 deducted a sum of Rs. 46.075/- from the retirement gratuity due payable to the petitioner as recovery of the excess payment of pay and allowances to the petitioner. On careful examination of the chart prepared by the respondent No. 1 showing the pay fixation of the petitioner (at Annexure - X/4 to the counter affidavit of respondent No. 1), it is clearly seen that the AG's Office calculated the pay fixation of the petitioner by showing the Basic Pay of the petitioner as Rs. 4,400/- as on 01-01-2006 whereas the Administrative Department show the Basic Pay of the petitioner as Rs. 4,500/- thereby resulting in the variation in the pay fixation of the petitioner. In the said pay fixation chart, the AG's Office also indicated that the reason for taking the Basic Pay of the petitioner as Rs. 4,500/- by the Administrative Department instead of Rs. 4,400/- is not known.

[11] In para. 6 of the counter affidavit filed by the respondent No. 1, it is clearly stated that as on 01-07-2005, petitioner's Basic Pay was fixed at Rs. 4,400/- and the revised pay scale of the petitioner as per ROP, 2010 was to be calculated w.e.f. 01-01-2006. There is nothing on record to show the Basic Pay of the petitioner as on 01-01-2006. We cannot ignore the fact that the Basic Pay of every Government employee is increased regularly on account of the annual pay increment as provided under the rules. As the petitioner's Basic Pay was Rs. 4,400/- as on 01-07-2005, the Basic Pay of the petitioner must have increased to Rs. 4,500/- in the year 2006 due to the yearly increment of the pay scale as provided under the rules. Without at all ascertaining the basic pay scale of the petitioner as on 01-01-2006 and the reason for showing the basic pay scale of the petitioner as Rs. 4,500/- by the Administrative Department, the respondent No. 1 calculated the revised pay scale of the petitioner by taking the basic pay of the petitioner as Rs. 4,400/- as on 01-01-2006 and issued the impugned order for deducting the amount of Rs. 46,075/- from the retirement gratuity of the petitioner on the alleged ground of recovery of excess payment of pay and allowances to the petitioner, that too, without giving any notice or opportunity of being heard to the petitioner. In my considered view, such action of the respondent No. 1 is arbitrary and in complete violation of the principle of natural justice. On this count alone, the impugned order is liable to be quash and set aside.

[12] So far as the stand of the respondent No. 1 that the deduction had been made on the basis of the Consent Certificate given by the petitioner is concerned, it is to be pointed out that such stand of the respondent No. 1 had already been considered and decided by this court

in its judgement and order dated 13-07-2022 passed in WP(C) No. 574 of 2021. The operative portion of the said judgement and order are as under:-

“26. The consent/self-declaration to the effect that the petitioner undertook to deduct overpayment of pay and allowance is concerned, the learned counsel for the petitioner submitted that the petitioner signed in a letter dated 28.9.2011 prepared by the Zonal Education Officer addressed to the Senior Accounts Officer (Pension) thereby consenting to deduct the overpayment resulted in her pay and allowances on account of placement to higher scale of pay so as to enable her to meet her present serious financial hardships.”

“27. Normally, if the retiring staff refused to sign in the said letter, the pension proposal could not be processed. Therefore, faced with that situation only, the employee was signing. In this case also, as rightly argued by the learned counsel for the petitioner, the petitioner at that stage is bound to sign the said letter against her will for speedy disposal of her pension proposal. Therefore, plea of the first respondent that based on the consent/self-declaration deduction was made cannot be countenanced.”

[13] The aforesaid judgment and order dated 13-07-2022 passed in WP(C) No. 574 of 2021 had been upheld by a Division Bench of this court in its judgment and order dated 16-12-2022 passed in WA No. 121 of 2022 and also by the Hon’ble Apex Court in its order dated 20-03-2023 passed in SLP (C) No. 4798 of 2023 and the matter has attained finality. In my considered view, the aforesaid judgments of this court and the Hon’ble Apex Court is applicable in the present case and such judgments are binding on this court.

[14] It is well settled that pension is not a bounty, being a hard earned duties of an employee who has put in long and dedicated service till the age of retirement. The same principle would hold good for other retirement benefits also. It is no doubt true that that writ petitioner gave his consent in the aforesaid Consent Certificate, agreeing to the deduction of any Government dues from his retirement gratuity or from other pension

[11]

benefits payable to him, however, merely because his consent was given by him did not absolve the authorities from basing such deduction on legally valid and tenable grounds. We should also keep in mind that an employee on the verge of retirement would not be in a position to bargain and would be inclined to give consent so that his or her retirement benefits are processed expeditiously. Therefore, the mere fact that the petitioner gave his consent is not sufficient, in itself, to hold against him and gave the authorities a clean chit for their arbitrary and wholly unsustainable act.

[15] With regard to the contention of the respondent No. 1 that the petitioner did not disclosed the existence of the Consent Certificate given by him and approached this court by concealing such material evidence to obtain favourable order, it is to be pointed out that at the time of filing the present writ petition, the petitioner had no idea or reason or the ground for the deduction from his retirement gratuity. Only after filing of the counter affidavit by the respondent No. 1, the petitioner came to know about the reason or ground for the said deduction as disclosed in the said counter affidavit. In such a situation, this court is of the considered view that non-mentioning of the said Consent Certificate will not amount to concealment of facts and taking into consideration the facts and circumstances of the present case, as discussed hereinabove, this court is not inclined to dismiss the present writ petition and the grounds raised by the respondent No. 1.

[16] I have also carefully perused the three orders, all dated 27-07-2018 passed by this court in WP(C) No. 186 of 2018, WP(C) No. 258 of 2018 and WP(C) No. 259 of 2018 relied on by the respondent No. 1. In my considered view, nothing has been decided on merit by this court in the

said orders. All the said three writ petitions were closed after recording the submission of the learned counsels without deciding anything on merit and as such the said orders are not applicable in the facts and circumstances of the present case.

Taking into consideration the facts and circumstances of the present case and the discussions and the reasons given hereinabove and keeping in view the earlier judgments and orders passed by this court and the Hon'ble Apex Court, this court is of the considered view that the order passed by the respondent No. 1 for deducting the amount of Rs. 46,075/- from the retirement gratuity of the petitioner is illegal and unsustainable in the eyes of law and accordingly, the same is hereby quashed and set aside so far as the order for recovery of the aforesaid amount is concerned. Resultantly, the respondents are hereby directed to release the deducted amount of Rs. 46,075/- to the petitioner as early as possible but not later than two months from the date of receipt of a certified copy of this order.

With the above directions, the writ petition stands allowed. Parties are to bear their own costs.

JUDGE

FR / NFR