

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No.729 of 2019

Leishangthem Chandrakeshore Singh, aged about 62 years, S/o (Late) L. Chaoba Singh, R/o Tera Sapam Leirak, P.O. & P.S. : Lamphel, District: Imphal West 795001, Manipur.

...Petitioner

-Versus-

1. The State of Manipur, represented by the Principal Secretary/Commissioner, Minor Irrigation Department, Government of Manipur, Secretariat, P.O. & P.S. Imphal, District : Imphal West, Pin No. 795001.
2. The Chief Engineer, Minor Irrigation Department, Government of Manipur.
3. The Principal Accountant General (A&E), Manipur, Imphal-795001.

...Respondents

**BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN**

For the Petitioner	::	Mr. L. Anand, Adv.
For the Respondents	::	Mr. S. Suresh, Adv. for R-3 Mrs. L. Monomala, GA for R-1 & R-2
Date of Hearing and reserving Judgment & Order	::	04.07.2023
Date of Judgment & Order	::	02.08.2023

JUDGMENT AND ORDER
(CAV)

Heard Mr. L. Anand, learned counsel for the petitioner; Mrs. L. Monomala, learned GA for the respondents 1 and 2; and Mr. S. Suresh, learned counsel for the third respondent.

2. This writ petition has been filed by the petitioner to quash a portion of the impugned statement dated 13.10.2017 issued by the office of the Accountant General, Manipur, on the basis of which, a sum of Rs.5,82,002/- was recovered as excess payment/over payment from the gratuity amount and dearness relief after his retirement and to direct the official respondents to refund the said amount with admissible interest.

3. Mr. L. Anand, the learned counsel for the petitioner submitted that the petitioner was retired from service on 28.2.2017 on attaining the age of superannuation as Road-Mohorir in Minor Irrigation Department, Government of Manipur. After his retirement, the pension papers was submitted to the authorities for processing his entitled retiral benefits. In due course of time, the office of the third respondent issued pension payment order along with the impugned

statement showing the details of calculation of his retirement benefits and deduction of overpayment from his gratuity and dearness relief.

4. The learned counsel for the petitioner further submitted that the impugned portion of the statement dated 13.10.2017 shows the calculated amount of total dearness relief as Rs.1,37,033/-; gratuity payment order amount to Rs.5,46,000/- and commutation payment order amount to Rs.2,97,148/-. While so, to the utter shock, an amount of Rs.5,82,002/- was deducted from the total amount of gratuity payment order of Rs.5,46,000/- and the remaining balance amount of Rs.36,000/- from the amount of dearness relief of Rs.1,37,033/-.

5. According to the learned counsel for the petitioner, there is an illegal deduction/recovery for overpayment of a huge amount of Rs.5,82,002/- and the same has been completely curtailed and arbitrarily forfeited by the respondent authorities from the retirement benefit of the petitioner which would be impressible in law. In fact, the aforesaid deduction made the petitioner to suffer from untold miseries and hardships.

6. According to the learned counsel, aggrieved by the action of the respondents, the petitioner submitted a representation on 19.8.2019 requesting refund of the said amount. Though the said representation was duly received by the office of the respondents, no action has been taken till date.

7. The learned counsel for the petitioner urged that the alleged overpayment made by the official respondents was not on account of any misrepresentation or fraud on the part of the petitioner. Therefore, the petitioner cannot be held liable and made to suffer for the wrong committed by the officials. The petitioner is presently facing lot of hardship for survival with the meagre retirement benefits he is receiving after the deduction/recovery made by the respondent authorities. Thus, a prayer has been made to set aside the portion of the impugned statement on the basis of which the amount of Rs.5,82,002/- was recovered as excess payment from the gratuity amount and dearness relief. To fortify his submissions, the learned counsel relied upon the following decisions:

*(i) Shyam Babu Verma and others v.
Union of India and others, (1994) 2
SCC 521.*

(ii) State of Punjab and others v. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334.

8. Per contra, Mr. S. Suresh, the learned counsel for the third respondent submitted that on scrutiny of pension papers and service records of the petitioner, it was found that the petitioner was appointed as Road Mohorir in the scale of pay of Rs.215-340/- with effect from 14.5.1980. Under ROP 1999, the pay of the petitioner was fixed in the scale of pay of Rs.3050-4590 with effect from 1.1.1996. He was granted ACP-I in the scale of pay of Rs.4000-100-6000/- and his pay was fixed at Rs.4500/- on 1.7.2005 and he was granted ACP-II in the scale of pay of Rs.5000-100-8000 and his pay was fixed at Rs.5000/- on 1.7.2005. However, as per condition No.8 of the conditions for grant of benefits under the ACP Scheme as contained in Annexure 1 to the office memorandum dated 20.7.2005 issued by the Finance Department, the financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a grade/category of posts without creating new posts for the purpose.

9. Mr. S. Suresh, the learned counsel for the third respondent drawing this Court's attention to the office memorandum dated 20.7.2005 further submitted that when the petitioner was entitled to financial upgradation under ACP-I and ACP-II with effect from 1.7.2015, his pay should have been fixed at Rs.4475/- in the scale of pay at Rs.3200-4900/- i.e. the next higher pay scale from his existing scale of Rs.3050-4590/-, but it was wrongly fixed at Rs.4000-6000/- by jumping one additional stage under ROP, 1999 and in ACP-II his pay should have been fixed at Rs.4600/- in the scale of pay of Rs.4000-6000/- i.e. next higher pay scale of Rs.3200-4900/-, but it was wrongly fixed at Rs.5000/- in the scale of pay of Rs.5000-8000/-.

10. The learned counsel for the third respondent added that consequent on revision of pay under ROP 1020, the pay of the petitioner was fixed at Rs.9300/- in the pay band of Rs.9300-34800/- with grade pay of Rs.4200/- with effect from 1.6.2006 which should have been fixed at Rs.8560/- in the pay band of Rs.5200-20200/- with grade pay of Rs.2400/- with effect from 1.6.2006. Due to non-fixation of pay to the corresponding higher scale of pay while granting financial upgradation under ACP-I and ACP-II respectively and the non-fixation of pay in the corresponding pay band of Rs.5200-20200/- with grade pay of

Rs.2400/- with effect from 1.1.2006 under ROP 2010, there was overpayment of pay and allowances amounting to Rs.5,82,002/-.

11. The learned counsel next submitted that the said irregularity was intimated to the Chief Engineer on 28.6.2017. Pursuant to the said letter, the Chief Engineer submitted the service book of the individual and the order dated 28.8.2017 of excess payment of pay and allowances amount to Rs.5,82,002/- vide letter dated 30.8.2017.

12. The learned counsel urged that on the basis of the consent certificate given by the petitioner consenting that he has no objection to the recovery of the Government dues/outstanding dues, if any found/detected from the receivable retirement gratuity coupled with the order/decision from the Executive Engineer, MID. The third respondent settled the retiral benefits of the petitioner after adjusting the amount of Rs.5,82,002/- being overpayment of pay and allowances from the retirement gratuity of the petitioner.

13. Mr. S. Suresh, the learned counsel for the third respondent submitted that it will be a violation of existing provision of MSC (Pension) Rules, 1977, if the deduction of

overpayment of pay and allowances was not carried out by the third respondent. The action of the third respondent is in accordance with the condition under Rule 70(A), 71(2) and 73(3) of the MCS (Pension) Rules, 1977. Thus, a prayer has been made to dismiss the writ petition.

14. Mrs. L. Monomala, the learned Government Advocate appearing for the respondents 1 and 2 has adopted the arguments made by the learned counsel for the third respondent.

15. This Court considered the rival submissions and also perused the materials available on record.

16. The grievance of the petitioner is that deduction of a huge amount of Rs.5,82,002/- from the retiral benefits of the petitioner after his retirement by the authorities on account of overpayment during his service period has made the petitioner to suffer much hardship. The malafide act of the officials of the respondent is against the law laid down by the Hon'ble Supreme Court.

17. According to the third respondent, the Principal Accountant Genera/Accountant General is not responsible for

the administrative function/decision of the State authority except for compliance of the State authority in relation to GPF, pension and gazette entitlement. It is the say of the third respondent that in accordance with Rule 70(A), 71(2) and 73(3) of the MCS (Pension) Rules, 1977 read with the GI decision No.6 below Rule 73 of the MCS (Pension) Rules, 1977, the third respondent settled the pension by deducting overpaid pay and allowances amounting to Rs.5,82,002/-.

18. It is an admitted fact that the petitioner after serving a gross qualifying service of about 37 years retired on attaining the age of superannuation on 28.2.2017 as Road Mohorir, which is a Class-III/IV service under Minor Irrigation Division-I M.I Department, Manipur.

19. The learned counsel for the third respondent submitted that it was wrongly fixed at Rs.4000-6000/- by jumping one additional stage under ROP 1999 and in ACP-II, the petitioner's pay should have been fixed at Rs.4600/- but it was wrongly fixed at Rs.5000/-. Consequent on revision of pay under ROP 2010, the pay of the petitioner was fixed at Rs.9300/- in the pay band of Rs.9300-34800/- with grade pay of Rs.4200/- with effect from 1.1.2006 which should have been

fixed at Rs.8560/-. Due to non-fixation of pay to the corresponding higher scale of pay while granting financial upgradation under ACP-I and ACP-II respectively and the non-fixation of pay in the corresponding pay band of Rs.5200-20200/- with grade pay Rs.2400/- with effect from 1.1.2006 under ROP 2010, there was overpayment of pay and allowances amounting to Rs.5,82,002/-.

20. Nothing has been produced by the respondents to show that the nature of fixation of pay and granting financial upgradation to the petitioner since 2005 was due to any misrepresentation or fraud played by the petitioner. The fixation of pay was done by the officials of the Department.

21. In *Shyam Babu Verma*, supra, the Hon'ble Supreme Court held that higher pay scale given erroneously to incumbents without their fault, shall not be recovered. In paragraph 11, the Hon'ble Supreme Court held:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 300-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-

560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.”

22. The learned counsel for the third respondent argued that the petitioner himself voluntarily and on his own agreed that he has no objection to the recovery of the Government dues/Outstanding dues, if any found from his receivable retirement gratuity which he reduced in writing in the form of consent. Therefore, based on the consent letter, the third respondent deducted the overpayment and, thus, the third respondent was right in their action. The learned counsel for the third respondent has relied upon few orders of the Single Bench of this Court in support of his argument.

23. On a perusal of the orders of this Court relied upon by the learned counsel for the third respondent, namely (i) *W.P.(C) No.258 of 2018, decided on 27.7.2018*; (ii) *W.P.(C)*

No.259 of 2018, decided on 27.7.2018 and (iii) W.P.(C) No.690 of 2010, decided on 25.7.2019, it is clear that the facts set out in the aforesaid cases are entirely different compared to that of the present case. In the aforesaid orders, the Single Bench held that the petitioners therein by their own conduct are disentitled to the relief sought for in the writ petitions. Whereas, in the case of hand, if we see the alleged consent letter relied upon by the third respondent, it is clear that the consent letter said to have been given by the petitioner does not show even the date.

24. In the consent letter said to have been submitted by the petitioner, it has been stated “... *I have no any objection to the recovery of the Government dues/Outstanding dues if any found/detected from my receivable Retirement Gratuity*”.

25. The learned counsel for the petitioner submitted that if there is existence of any kind of undertaking or consent towards recovery obtained from the petitioner by the respondent authorities under duress at the time of finalization of his pension papers, which the petitioner cannot correctly recall nor has any record of such, the same is illegal and cannot be lawfully used against the petitioner. This Court finds some

force in the said submission made by the learned counsel for the petitioner.

26. It is well settled that any consideration or object of an agreement which is forbidden by law or which may cause injury to person or property of another or opposed to public policy is unlawful.

27. Normally, if the retiring staff refused to sign in the consent letter, the pension proposal could not be processed. Therefore, faced with that situation only, the employee is 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 his will for speedy sanction of his pension proposal. Thus, the case of the third respondent that based on the consent letter deduction was made cannot be countenanced.

28. In *Rafiq Masih (White Washer)*, supra, the Hon'ble Supreme Court held that recovery should not be made from the retired employees. In paragraph 18, the Hon'ble Supreme Court held:

“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 be 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."

29. The situations summarized by the Hon'ble Supreme Court in *Rafiq Masih (White Washer)*, supra, are squarely applicable to the case on hand. Therefore, the petitioner being a Class III/Class IV employee and the wrong fixation is not on the fault or misrepresentation of the petitioner, the deduction of the overpayment from the retiral benefit after the retirement of the petitioner is illegal and the same is not permissible under law. This Court is of the view that if any such excess payment is allowed to be recovered from the employees of lower rung, it would cause them far more hardship, than the reciprocal gains to the employer. In this regard, the Hon'ble Supreme Court, time and again, held that excess recovery from employees belonging to the lower rungs i.e. Class III and Class IV/Group C and Group D of service should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and, therefore, would

also breach the mandate contained in Article 14 of the Constitution of India.

30. As stated supra, in the case on hand, the petitioner after serving a gross qualifying pensionable service of about 37 years had retired on reaching superannuation on 28.2.2017. It is trite that any excess recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement. Any excess amount paid to the employee who had already retired from service, more particularly Class C and Class D employees, cannot be recovered.

31. It is pertinent to note that in the impugned statement dated 13.10.2017, the third respondent has failed to show the detailed amount of overpayment made at regular intervals or increments made to the petitioner by indicating the year. Besides, no notice was issued to the petitioner to explain as to how the excess payment should not be deducted from the retiral benefits of the petitioner. In the absence of notice to the employee before the recovery of the excess payment, the action of the authorities is in violation of the principles of natural justice. In any event, the excess amount which had been already made to the petitioner by the employer and which had not been

occasioned due to any fraud or misrepresentation on the part of the petitioner shall not be permissible for any recovery to be made after his retirement. Therefore, this is a fit case to interfere with the action of the respondent authorities in deducting Rs.5,46,000/- from the total amount of gratuity payment order and Rs.36,000/- from the amount of dearness relief, totaling Rs.5,82,002/-.

32. During the course of arguments, the learned counsel for the third respondent has relied upon the following decisions:

- (i) *K.D.Sharma v. State Authority of India Ltd.*, (2008) 12 SCC 481.
- (ii) *High Court of Punjab & Haryana v. Jagdev Singh*, (2016) 14 SCC 267.
- (iii) *Vikramjit Singh v. State of Madhya Pradesh*, (1992) Supp 3 SCC 62.
- (iv) *Jai Singh and others v. MCD*, (2010) 9 SCC 385.
- (v) *Amarjeet Singh and others v. Devi Ratan and others*, (2010) 1 SCC 417.
- (vi) *P.Singaravelan v. Collector, Tituppur*, (2020) 3 SCC 133.

(vii) *State of U.P. and another v. Synthetics and Chemicals Ltd. and another*, (1991) 4 SCC 139.

(viii) *Haryana Financial Corporation and others v. Jagdamba Oil Mills and another*, (2002) 3 SCC 496

(ix) *Central Board of Dawoodi Bohra Community and another v. State of Maharashtra and another*, (2005) 2 SCC 673.

(x) *Dr. Shah Faesal and others v. Union of India and another*, (2020) 4 SCC 1.

(xi) *Chandra Prakash and others v. State of UP and another*, (2002) 4 SCC 234.

(xii) *National Insurance Company Limited v. Pranay Sethi and others*, (2017) 16 SCC 680.

33. In view of the factual finding arrived at by this Court, the decisions aforesaid relied upon by the learned counsel for the third respondent are not elaborated further in this order. Moreover, the same are not squarely applicable to the case of the third respondent.

34. For the reasons stated supra, this Court is of the view that the prayer made in the writ petition is acceptable and, accordingly, this Court is inclined to pass the following order:

- (i) *The writ petition is allowed.*
- (ii) *The portion of the impugned statement dated 13.10.2017 issued by the office of the Accountant General, Manipur, whereby deduction of a sum of Rs.5,82,002/- is made from the gratuity amount and dearness relief of the petitioner is set aside.*
- (iii) *The official respondents are directed to refund the amount of Rs.5,82,002/- to the petitioner within a period of three months from the date of receipt of a copy of this order.*
- (iv) *There will be no order as to costs.*

ACTING CHIEF JUSTICE

FR/NFR

Sushil