

Court No. - 34

Case :- WRIT - A No. - 1378 of 2019

Petitioner :- Shripal Singh (since deceased) through legal representatives

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Purushottam Mani Tripathi, Sanjeev Singh

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard learned counsel for the parties and their arguments raised across the bar.

2. The deceased petitioner had challenged the order dated 20.11.2018 on the ground that recovery could not have been directed for any access payment made to him during service period, may be for wrongful pay fixation.

3. Later on petitioner died and his heirs came to be substituted. It is worth noticing also that the deceased petitioner had attained the age of superannuation on 30.11.2018, 10th day of the order of recovery.

4. It is argued on behalf of the substituted petitioners now that the deceased petitioner being Group - C employee, no such recovery should have been made access payment made to him on account of wrongful pay fixation for conformant of ACP benefit. He has placed reliance upon the judgment of Supreme Court in the case of **State of Punjab & Others v. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334** in which the Supreme Court very categorically held that in the case of Group - C and Group - D employees the recovery shall not be made from the access amount. Still further those who have retired as such, no recovery can be pursued. In the case of Rafiq Masih (supra) the Supreme Court has observed thus:

"12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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 recover."*

5. This above view has been further followed reiterated in the case of **Thomas Daniel v. State of Kerala & Ors, AIR 2022 SC 2153** in which the Court has relied upon a decision in the case of **Col. B.J. Akkara (Retd.) v. Government of India (2006) 11 SCC 709**, wherein, it was held that the recovery of the access amount is restrained in equity while the Court exercises judicial discretion to relieve the employee from hardship that will be caused if such a recovery is implemented and this view has been taken more particularly in respect of employees of lower rungs. The Court then relied upon the judgment in the case of **Syed Abdul Qadir v. State of Bihar (2009) 3 SCC 475** in which vide para 59 it was held thus "*Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.*"

6. Learned Standing Counsel does not dispute the above legal proposition but submits that if the deceased had given any undertaking before the authority concerned, that the judgment in

the case of Rafiq Masih could not be attracted in the light of judgment of Supreme Court in the case of **High Court of Punjab and Haryana & Others v. Jagdev Singh, (2016) 14 SCC 267** in which vide para 11 the Court has held thus:

"11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

7. Having heard learned counsel for the respective parties and having perused the record, the only controversy seems to be as to whether petitioner had furnished any affidavit or undertaking before the authority at the time of pay fixation or not. It has been clearly averred vide paragraph no. 19 of the writ petition that there being no allegation of misrepresentation or fraud, nor any undertaking ever given by the petitioner to the effect that such A.C.P. benefit to be conferred upon him, the resultant access payment cannot be said to be on account of such misrepresentation. Para 19 of the writ petition is reproduced hereunder:

"19. That the petitioner further respectfully submits that the order impugned is also unsustainable as there is no allegation of misrepresentation or fraud practiced by him in getting the said amount nor any undertaking was given to the said effect."

8. A counter affidavit has been filed on behalf of respondents and sworn by Nishant Pandey posted as Block Development Officer, Sikandarabad, District Bulandshahar in which reply to para 19 of the writ petition has been given along with reply of paras 17, 18, 20, 21, 22, 23 vide para 11 thus:

"11. That the contents of paragraph nos. 17 to 23 of the writ petition are not admitted hence denied. In reply it is submitted that a proper and suitable reply has already been given in preceding paragraph of this counter affidavit. All the grounds taken by the petitioner are false and misleading and not tenable in law, as well as is not sustainable hence the writ is liable to be rejected with costs."

9. In view of the above, it is clear that para 19 of the writ petition has not been specifically denied as the denial of undertaking or any misrepresentation or fraud at the end of petitioner. Thus, petitioner cannot be held guilty on the principle of *suggestio falsi* or *suppressio veri* and the judgment in the case of Yogendra Kumar (supra) will not be attracted in the setting of facts of the present

case.

10. The law is well settled that ignorance of law is no excuse. It has been held by the Supreme Court in the case of **The Swadeshi Cotton Mills Co. Ltd. v. The Government of U.P. & Ors,(1975) 4 SCC 378** that "*every individual is deemed to know the law of the land*" and the judgment of Rafiq Masih (supra) was delivered on 18.12.2014 prior to the recovery of amount from the gratuity of the petitioner, and hence recovery is absolutely unsustainable as University Registrar cannot claim that he was not aware of the law.

11. Therefore, the petitioner is held entitled to not only the refund of the amount recovered but also interest upon such recovered amount for wrongful application of law and the impugned order in the teeth of judgments delivered by Supreme Court.

12. The order dated 20.11.2018 and the order dated 27.02.2019, whereby, the amount was recovered, are hereby quashed to the extent recovery of access amount. The entire amount already recovered shall be refunded to him along with interest @ 8% till actual payment is made. Payment, as directed herein above, shall be made within a period of two months from the date of production of certified copy of this order.

13. Thus, this petition succeeds and is **allowed** as above, however, with no order as to cost.

Order Date :- 26.10.2023

IrfanUddin