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IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WA No. 10 of 2020

1. The State of Manipur, through the Commissioner (Revenue), Government of Manipur, Imphal, Manipur.
2. The Joint Secretary, (Pension Cell) Government of Manipur, Imphal, Manipur.

.... Applicants

-Versus-

1. Shri A.S. Ringam, aged about 61 years, S/o A.S. Yarrei, resident of Shiroy Village, P.O & P.S. and District Ukhrol, Manipur.

.... Principal Respondent in the Writ Appeal

2. The Accountant General (A&E) Manipur, Imphal, Manipur.

.... Performa Respondents in the Writ Appeal

B E F O R E

**HON'BLE THE CHIEF JUSTICE MR. SIDDHARTH MRIDUL
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU KABUI**

For the appellants : Mr. M. Rarry, Special State Advocate
For the respondents: Mr. Kh. Tarunkumar, Senior Advocate
Mr. S. Samarjeet, Senior PCCG
Date of hearing : 07.05.2024
Date of order : **19.07.2024**

JUDGMENT & ORDER
(CAV)

(Golmei Gaiphulshillu, J)

[1] Heard Mr. M. Rarry, learned Special State Counsel appearing on behalf of the appellants; Mr. Kh. Tarunkumar, learned senior counsel appearing on behalf of respondent No. 1; and Mr. S. Samarjeet, learned Sr. PCCG appearing on behalf of respondent No. 2.

[2] The present writ appeal has been filed by the State of Manipur under IV-A 3 (2) of the Manipur High Court Rule against the impugned Judgment and Order dated 19.12.2019 passed in W.P.(C) No. 282 of 2014 by the Hon'ble Single Judge praying for:

- (i) Passing an order admitting the present appeal for hearing and call for the records of the case;*
- (ii) Passing an order allowing the present appeal by quashing and setting aside the impugned judgment and order dated 19.12.2019 passed in WP(C) No. 282 of 2014.*
- (iii) Passing any other order or order(s) or direction as this Hon'ble Court deems fit and proper in the facts of the case, for meeting the ends of justice.*

[3] The above referred to W.P.(C) No. 282 of 2014 was filed by the respondent No. 1/petitioner seeking direction on the proforma respondent No. 2/third respondent to pay pension at

Rs. 5,390/- which is 50% of his last pay/emoluments in pursuance with Rule 49(2) of the Manipur Civil Service Pension Rule, 1977 with a further direction on the proforma respondent No. 2/third respondent to pay the respondent no.1/petitioner of his retirement gratuity at Rs. 2,76,770/- in pursuance with Rule 50(1)(a) of the Manipur Civil Service Pension Rule, 1977 by refunding the deducted amount of Rs. 22,589/- to the respondent No.1/petitioner.

[4] The case of the respondent No. 1/petitioner is that he was initially appointed as a Lambu at the Office of the Deputy Commissioner, Manipur East District on 03.06.1980 on regular basis and after rendering more than 30 years of regular, superannuated on 31.10.2012. After retirement, the Sub Divisional Officer, who is the drawing officer of the respondent No. 1/petitioner, prepared the last pay certificate and as per the last pay certificate, his pay was fixed at Rs. 8,980/- with grade pay of Rs. 1,800/-. Thereafter, the Sub Divisional Officer submitted pension papers of the respondent No.1/petitioner to the Joint Secretary (Pension Cell), Government of Manipur for perusal and onward submission to the office of the proforma respondent No. 2/ third respondent on 04.02.2013. Further, on 02.07.2013, the Under Secretary (Pension Cell) forwarded the pension papers to the office of the third respondent. On

25.09.2013, the Senior Accounts Officer (Pension Cell) of the Office of the proforma respondent No. 2/third respondent issued the gratuity payment order in favour of the respondent No. 1/petitioner to the District Treasury Officer, wherein the respondent No. 1/petitioner was given only an amount of Rs. 2,45,975/- as his retirement gratuity and by the said gratuity payment order, an amount of Rs. 22,589/- was deducted from his retirement gratuity of Rs. 2,68,564/-. On 04.10.2013, the proforma respondent No. 2/third respondent issued pension payment order in favour of the respondent No. 1/petitioner for an amount of Rs. 5,330/- as his monthly pension to the office of the District Treasury, Ukhrul, Manipur. It is averred that the Sub Divisional Officer, Chingai, prepared the pension, retirement gratuity etc. in respect of the respondent No. 1/petitioner wherein his monthly pension was prepared at the rate of Rs. 5,390.- and his retirement gratuity was fixed at the rate of Rs. 2,76,770/-.

[5] The grievance of the respondent No.1/petitioner was that a sum of Rs. 22,589/- was deducted from the retirement gratuity without giving any reason for deduction of the same. No reason has been recorded except the word overpayment in the gratuity payment order dated 25.09.2013 and the recovery order was issued in violation of natural justice

and therefore, the same was liable to be set aside. According to the respondent No. 1/petitioner, he did not commit any act of fraud or misrepresentation to enjoy any financial benefit from the Government. Therefore, the proforma respondent No. 2/third respondent was required to be directed to refund the deducted amount of Rs. 22,589/- to him which was deducted by the proforma respondent No. 2/third respondent as overpayment of pay from the retirement gratuity of the respondent No. 1/petitioner.

[6] Accordingly the respondent No. 1/petitioner submitted that the amount of pension of a retired Government Servant who retired from service in accordance with above said Pension Rules shall be calculated at 50% of emolument or average emoluments whichever is more beneficial to him. However, the proforma respondent No. 2/third respondent in violation of Rule 49(2) of the CCS Pension Rules, 1972, had prepared the monthly pension at the reduced rate i.e. at Rs. 5,230/- per month instead of his actual entitlement of monthly pension at Rs. 5,390/- per month. In such facts, the respondent No. 1/petitioner filed the above referred to W.P.(C) No. 282 of 2014 praying for directing the proforma respondent No. 2/third respondent to give his monthly pension in conformity with the Rule 49(2) of the MCS (Pension) Rules, 1997.

[7] The learned counsel for the appellants submitted that the Deputy Secretary (Revenue), Government of Manipur after minute examination of the service book in respect of the respondent No. 1/petitioner by the Office of the Accountant General of Manipur, the wrong fixation of pay in respect of the respondent No. 1/petitioner was detected and they rectified the fixation of pay under ROP 1990, thereby making recovery from retirement gratuity of the respondent No. 1/petitioner. He further admitted that the basic pay of respondent No. 1/petitioner has been reduced on the day of retirement with the recasting of pay fixation under ROP, 1990. It is stated that the pay of the respondent No. 1/petitioner as on 01.06.1995 was Rs. 899/- in the scale of pay Rs. 775-1025 under ROP 1990. On coming to the new pay structure under ROP 1999, his pay should be fixed at Rs. 2,790/- in the scale of pay of Rs. 2610-3580/-, however, it was wrongly fixed at Rs. 2,850/- by the office of the Sub Divisional Officer, Chingai, in collusion with the respondent No. 1/petitioner. Therefore, overpayment was caused due to wrong fixation of pay under ROP 1999 and its subsequent ROPs. The office of the proforma respondent No. 2/third respondent calculated the pensionary benefits of the respondent No. 1/petitioner under Rule (2) of the MCS (Pension) Rules on the basis of the corrected pay and overpayment of Rs. 22,589/- was

detected and the same was recovered from his retirement gratuity. Therefore, there is no violation of the pension Rules as well as fundamental rights of the respondent No. 1/petitioner. Hence, prayed for dismissal of the above referred writ petition.

[8] Further, the learned counsel for the proforma respondent No. 2/ third respondent submitted that after coming to know about the wrong fixation, the pensionary benefits of the respondent No. 1/petitioner was calculated under Rule 49(2) of MCS (Pension) Rules on the basis of corrected pay and overpayment of Rs. 22,589/- was detected and the same was also recovered from his retirement gratuity as per the consent given by the respondent No. 1/petitioner. Therefore, this is no violation of pension Rules and hence prayed for allowing the proforma respondent No. 2 to recover the excess payment made to the respondent no.1.

In support of his case, the proforma respondent No. 2/third respondent relied upon the following Judgment:

1. (1991) 4 SCC 139 – [State of U.P. vs. Synthetics and Chemicals Ltd.]

"41."A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind." (Salmond on Jurisprudence 12th Edn., p.153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by

earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The Bench held that, 'precedents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent....."

2. (2002) 3 SCC 496 – [Haryana Financial Corporation vs. Jagdamba Oil Mills]

"21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

22. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT)

"19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a

case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

3. (2005) 3 SCC 409 – [Karnataka State Road Transport

Corporation vs. S.G. Kotturappa]

"24. The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality....."

4. (2007) 13 SCC 352 – [Andhra Pradesh Social Welfare Residential Educational Institutions Vs Pindiga Sridhar]

"7. By now, it is well-settled principle of law that the principles of natural justice cannot be applied in a straitjacket formula. Their application depends upon the facts and circumstances of each case. To sustain the complaint of the violation of principles of natural justice one must establish that he was prejudiced for non-observance of the principles of natural justice..... In such admitted facts, there was no necessity of issuing show-cause notice to him. The view of the High Court that termination suffers from the non-observance of the principles of natural justice is, therefore, clearly erroneous. In our view, in the given facts of this case, no prejudice whatsoever has been caused to the respondent. The respondent could not have improved his case even if a show-cause notice was issued to him."

5. (2016) 14 SCC 267 – [High Court of Punjab & Haryana v. Jagdev Singh]

"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."

[9] In the above referred to W.P.(C) No. 282 of 2014, the Hon'ble Single Judge passed impugned order dated 19.12.2019, relevant portion of order reads as follows;

"21. In the result -

- (i) The writ petition is allowed.
- (ii) The order of recovery dated 25.09.2023 passed by the Senior Accounts Officer (Pension), Office of the Accountant General (A&E) Manipur, is set aside.
- (iii) The respondent authorities are directed to refund the deducted amount of Rs. 22,589/- to the petitioner, within a period of one month from the date of receipt of a copy of this order.
- (iv) The respondent authorities are directed to prepare the monthly pension of the Petitioner by following the provision of Rule 49 (2) of the Manipur Civil Service (Pension) Rules, 1977 at the rate of Rs. 5,390/- per month and pay the same to the petitioner, within a period of two months from the date of receipt of a copy of this with no order as to costs."

[10] Being aggrieved by the order dated 19.12.2019, the State appellants has preferred the present appeal. The appellants contended that the impugned judgment suffers from material illegality as the impugned judgment has been passed

without considering the entire documents and material filed by the respondents in the said writ petition. As per the appellants, the Ld. Single Judge has totally failed to consider the aspect and settled position of law in respect to the present case. He further contended that it is a settled principle of law that an action of the State ordering a recovery from an employee would be in order, so long as it is not rendered iniquitous, to the extent that the action of recovery would be more unfair, more wrongful, more improper and more unwarranted than the corresponding right of the employer to recover the amount or in other words, till such time, as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law.

In support of his case, the appellant relied upon the following judgment;

1. (2012) 8 SCC 417 - [Chandi Prasad Uniyal & Ors. v. State of Uttarkhand & Ors.]

"7. We may also indicate that when the revised pay scale/pay fixation was fixed on the basis of the 5th Central Pay Scale, a condition was superimposed which reads as follows:

"In the condition of irregular/wrong pay fixation, the institution shall be responsible for recovery of the amount received in excess from the salary/pension."

The appellants are further bound by that condition as well. The facts, mentioned hereinabove, would clearly demonstrate that the excess salary was paid due to irregular/wrong pay

fixation by the District Education Officer concerned. The question is whether the appellants can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on their part, as contended.

8. We are of the considered view, after going through the various judgments cited at the Bar, that this Court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered.

14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

[11] The learned counsel for the principal respondent/petitioner submits that the respondent No. 1/petitioner was serving as Lambu, a mere Grade-IV/Group-D post in the Department of Revenue, Government of Manipur and retired from his service upon reaching the age of superannuation on

31.10.2012. Vide order dated 25.09.2013, the office of the Accountant General (A&E), Manipur issued the Gratuity Payment Order in favour of the respondent No.1/petitioner wherein a sum of Rs. 22,589/- was deducted from his total retirement Gratuity of Rs. 2,68,564/- without any notice or calling for his objection, in due compliance of the principles of natural justice. He further submits that he didn't have the capacity to influence his higher officials to enjoy the financial benefits, he simply enjoyed the financial benefits given by his employer from time to time by revising his scale of pay without any misrepresentation from his side.

In support of his case, he has relied upon the following judgment:

1. (2009) 3 SCC 475 – [Syed Abdul Qadir v. State of Bihar –relevant para – 57, 58, 59]

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment,

the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur.

59. *Undoubtedly, the excess amount that has been paid to the appellant 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 appellant 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 appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."*

2. (2015) 4 SCC 334 – [State of Punjab & 3 Ors v. Rafiq Masih & Ors – para- 18]

"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.*

3. (2016) 14 SCC 267 – [High Court of Punjab & Haryana v. Jagdev Singh – para 10]

"10. In *State of Punjab v. Rafiq Masih*, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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."*

[12] We have heard the submissions made by the learned counsel for the parties and also examined the materials placed before us in details. In the instant case, it is admitted position of fact that the respondent No.1 (Principal respondent) was appointed as Lambu on 03.06.1980 and retired from service at the same post on 31.10.2012 on attaining the age of superannuation.

But the appellant authority deducted/recovered a sum of Rs. 22,589/- from the total amount entitled to the respondent No. 1/petitioner as excess payment/overpayment.

[13] From the material placed before us, it is evident that the respondent No.1 was appointed in the year 1980 on regular basis as Lambu and retired in the same post in the year 2012 i.e. for 32 years rendered his service for the Govt. of Manipur. Even after almost 20 years the appellants/respondents failed to take initiative to modify or revoked the said impugned statement dated 25.09.2013 issued by the Accountant General on which basis a sum Rs. 22,589/- was recovered as excess overpayment from the gratuity amount and dearness relief after

his retirement. In such situation, we are of considered view that at this point of time no recovery can be made by the authorities from the retiral benefits and other service benefits of the petitioner in view of the settled principal of law laid down by the Apex Court as well as by this Court. In this regard, we are relying on the Judgment rendered by the Apex Court in the case of **"State of Punjab & Ors vs. Rafique Masih (White Washer) & Ors."** [(2015) 4 SCC 334] wherein after referring to a number of its earlier judgments, it has been held by the Hon'ble Apex Court as under:

"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."

The learned Apex Court laid down few guidelines wherein recoveries of the employees would be impermissible in law, such situations are: (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; and (iii) recovery from the employees, when excess payment has been made for a period in excess of five years, before the order of recovery is issued.

[14] In the instant case, it is undeniable fact that the respondent No.1/petitioner holds Class – IV (Group-D) post from the date of joining of his service till his retirement and since, any alleged excess payment has been made decades back, we are of the considered view that it is not permissible to make any recovery from the retirement benefit of the petitioner on ground of excess payment of pay and allowances in view of the principle of law laid down by the Hon'ble Apex Court reproduced herein above.

[15] The jurisprudence relied upon by the appellant as reproduced above are not applicable in the facts and circumstances of the instant case.

[16] For the reasons mentioned above, in our view, the Hon'ble Single Judge rightly passed the impugned order wherein the Hon'ble Single Judge set aside the impugned recovery order dated 29.05.2013 whereby deduction of a sum Rs. 22,589/- was made from the gratuity amount and dearness relief of the respondent No. 1/petitioner with the direction to the appellants and the respondent No. 2 to refund the deducted amount of Rs. 22,589/- to the respondent No. 1/petitioner.

[17] Accordingly, the present writ appeal is dismissed with direction to the appellants and respondent No. 2 to refund the deducted amount of Rs. 22,589/- (Rupees twenty two thousand five hundred and eighty nine) to the respondent No. 1/petitioner within a period of 2 (two) months from the date receipt of a copy of this order.

[18] Further the respondent authorities are directed to prepare the monthly pension of the petitioner by following the provision of Rule 49(2) of the Manipur Civil Service (Pension) Rules, 1977 at the rate of Rs. 5390/- per month and pay the same to the petitioner within a period of 2 (two) months from the date receipt of a copy of this order.

No order as to costs.

JUDGE

CHIEF JUSTICE

FR/NFR

Lucy