

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

WP (C) No. 528 of 2008

1. Shri Takhellambam Ibochouba Singh, aged about 58 years, S/o T. Kanglen, Naharup Makhapat, B.P.O. Khetri Bengun, P.O. & P.S. Porompat, Imphal East District, Manipur.
2. Shri Moirangthem Bhubonchandra Singh, aged about 57 years, S/o (L) M. Mani Singh of Khagempalli Pankha, P.O. & P.S. Singjamei, at present working as Inspector Co-operative Societies, Manipur.
3. Shri Ringmi Raising, aged about 58 years, S/o (L) Y. Raising of Paoyai Village, P.O. Paoyai, P.S. Chingngai, Ukhrul District, Manipur.

Petitioners

Vs.

1. The State of Manipur, represented by the Commissioner/Secretary (Co-operation), Government of Manipur.
2. The Commissioner/Secretary (Finance), Government of Manipur.
3. The Registrar of Co-operative Societies, Government of Manipur.

Respondents

**BEFORE
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the Petitioners : Mr. Juno Rahman, Advocate
For the Respondents : Mr. A. Vashum, Government Advocate
Date of hearing : 06.12.2023
Date of Judgment & Order : 11.01.2024

JUDGMENT & ORDER

[1] The present writ petition had been filed with a prayer for quashing and setting aside the impugned office memorandum dated 03.11.2006 and impugned order dated 28.01.2008 ordering for recovery of excess payment made to the petitioners.

The case of the petitioners is that they were all appointed as Inspector Co-operative Societies, Grade-II in the Office of the Registrar of Cooperative Societies, Manipur by orders dated 03.02.1982, 03.04.1973 and 21.04.1983 respectively. The petitioner No. 1 has retired from service w.e.f. 27.07.2009, the petitioner No. 2 has retired from service w.e.f. 28.02.2010 and the petitioner No. 3 has retired from service w.e.f. 28.02.2009.

[2] In column No. 9 of the Recruitment Rules for the post of Inspector CS, Grade-II providing the period of probation, a note is appended thereto which stipulates that drawal of 2nd and subsequent increments is subject to passing of the prescribed Departmental Examination.

The petitioner No. 1 passed the Departmental Examination in the year 2007, the petitioner No. 2 passed the Departmental Examination in the year 2007 and the petitioner No. 3 passed the Departmental Examination in the year 1992. However, before passing their Departmental Examination, the petitioners were allowed to draw the 2nd and subsequent increments in their pay w.e.f. 01.02.1984, 01.04.1981 and 01.04.1984 respectively and they have been enjoying such increments in their pay scale for the last many years.

[3] The Secretariat Finance Department (PIC), Government of Manipur, issued an office memorandum dated 03.11.2006 giving certain instructions for verifying the service records of the employees for consideration of grant of financial upgradation under the ACP's scheme. In para No. 2 of the said office memorandum, it is inter-alia, provided as under:-

*"Para No. 2.....******

(iv) To see if the 2nd and subsequent increments have been granted without passing the Departmental Examination as against the requirement of the respective Recruitment Rules.

(v) If so, pay is to be regulated from time to time without taking into account the increment(s) so allowed prior to

passing of the Departmental Examination and excess drawal to be recovered.

(vi) To verify when the employee passed the said Departmental Examination and when the 2nd and subsequent increment(s) have been allowed without arrear and if the area has been allowed the same is to be recovered."

Subsequently, the Registrar of Cooperative Societies, Manipur, issued a notification dated 28.01.2008 notifying grant of financial upgradation to 108 Inspector Cooperative Societies, including the petitioners, under the Assured Career Progression Scheme. Under the said notification it was also notified that incumbent shown at Annexure-B, appended to the said notification, have enjoyed the 2nd and subsequent increments before passing of the Departmental Examination and that the concerned DDOs should recover the increments in one time or monthly instalment from their salary and deposit the same in their respective salary head of Treasury Challan and to submit a monthly recovery report. In the said list of officers at Annexure-B, the names of the petitioners are at serial No. 1, 21 and 59.

[4] It has been submitted on behalf of the petitioners that rightly or wrongly the 2nd and subsequent increments in their pay had been made by the concerned authorities of the Government without any misrepresentation from the petitioners and without any fault on their part and that the petitioners have been enjoying such increments since 1984, 1981 and 1985. The impugned memorandum/notification for recovery was issued only in the year 2008 after a lapse of more than 2 (two) decades. It has also been submitted that as all the petitioners have already retired from service in the year 2009 and 2010 and as it has been more than 13 (thirteen) years post-retirement, any recovery at such stage will cause grave hardship to the petitioners and such action of the authorities are iniquitous and arbitrary and such action deserves to be interfered with by this Court.

[5] Mr. A. Vashum, learned Government Advocate appearing for the respondents submitted that all the petitioners have availed the 2nd and subsequent increments by misrepresenting expressly (as reflected in the service book showing their endorsement of signatures in relevant pages of the service books) that they have cleared the requisite Departmental Exam, though they never cleared the said Departmental Examination before availing the 2nd and subsequent increments.

However, after examination of the original service books of the petitioners, the learned Government Advocate fairly submitted that there is no evidence on record to support such statements made by the respondents.

[6] The learned Government Advocate further submitted that the petitioners have enjoyed the 2nd and subsequent increments before passing the Departmental Examination in violation of the conditions stipulated under the Recruitment Rules and as such, the drawal of 2nd and subsequent increments are illegal and accordingly, any action for recovery of such excess drawal from the petitioners cannot be termed as illegal.

In support of his contentions, the learned Government Advocate cited the judgment passed by the Hon'ble Apex Court in the case of **"Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others"** reported in (2012) **8 SCC 417**, wherein it has been held under:-

"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 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 any authority of law. Any amount paid/received 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."

[7] I have heard the submissions advance by the learned counsel appearing for the parties at length and also carefully examined all the materials available on record.

In the present case, the admitted position is that before passing the requisite Departmental Examination, the petitioners were granted the 2nd and subsequent increments in their pay by the authorities without any misrepresentation or fault on the part of the petitioners. There is also no evidence on record to support the statements made by the respondents in their additional affidavits that the petitioners availed the 2nd and subsequent increments by misrepresenting expressly that they have cleared the requisite Departmental Examination. In fact, after careful examination of the original service books of the petitioners, the learned Government Advocate fairly submitted that he did not find any evidence to support such statements made by the respondents. In such a situation, the only issue to be decided is whether it is permissible in law to let the respondents recover any excess payment made to the petitioners after a delay of more than 2 (two) decades.

In my considered view, such issue has been decided by the Hon'ble Apex Court in the case of **"State of Punjab and Others vs. Rafiq Masih (White**

Washer and others) reported in **(2015) 4 SCC 334**". The relevant paragraphs of the judgment are as under:-

"13. First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir case recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

"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."

[8] In paragraph No. 15 of the judgment of the "**Chandi Prasad Uniyal Case** (Supra), the Hon'ble Apex Court held that except few instances pointed out in *Syed Abdul Qadir case* and in *Col. B.J. Akkara case*, the excess payment made due to wrong/irregular pay fixation can always be recovered, thereby indicating that there are certain instances where recovery cannot be made.

In the case of **Rafiq Masih (White Washer)** (Supra), after considering the judgment rendered in **Chandi Prasad Uniyal case** (Supra) and various other Supreme Court judgment relating to the subject matter, the Hon'ble Apex Court has laid down the few situations/exceptions wherein recoveries by the employers are not permissible in law. One of the situations where recovery cannot be made is when the excess payment has been made for a period in excess of 5 (five) years before the order of recovery is issued.

[9] In the present case as the alleged excess payment was made to the petitioners for a period of more than 2 (two) decades before issuing the impugned recovery orders, this Court is of the considered view that such action of the respondents for making recovery of the excess payment is impermissible and illegal in view of the aforesaid judgment rendered by the Hon'ble Apex Court. Accordingly, the present writ petition is disposed of by directing the respondents not to make

any recovery from the petitioners in terms of the impugned office memorandum dated 03.11.2006 and impugned notification dated 28.01.2008.

With the aforesaid directions, the present writ petition is disposed of.

Parties are to bear their own costs.

JUDGE

FR/NFR

Sapana