

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

WA No. 49 of 2019

1. Smt. Potsangbam (N) Bhaigyabati Devi, aged about 60 years, W/O Shri L. Lukhoi Singh of Haobam Marak Keisham Leikai, P.O. Imphal and P.S. Singjamei, Imphal West, Manipur.
2. Smt. M. Sanahanbi Devi, aged about 61 years, retired teacher of Education (S), a resident of Chinga Makha Chanam Pukhri Mapal P.O. & P.S. Singjamei, Imphal West District, Manipur.
3. Smt. K. Ibechoubi Devi, aged about 62 years, retired teacher of Education (S), a resident of Khagempalli, P.O & P.S. Imphal West District, Manipur.
4. Shri. Laimayum Dhanachandra Sharma, aged about 63 years, S/O L. Udhob Sharma resident of Yaiskul Hiruhanba Leikai, P.O. & P.S. Imphal, District Imphal West, Manipur.

.... Appellants

- Versus -

1. The State of Manipur represented by the Commissioner/Secretary Education (S) Government of Manipur Secretariat Office, P.O. & P.S. Imphal, District-Imphal West, Manipur-795001.

2. The Accountant General, Manipur at Imphal, (Opposite) Secretariat Office, P.O & P.S. Imphal, District-Imphal West, Manipur-795001.
3. The Sr. Deputy Accountant General (A & E), Manipur, Imphal (Opposite) Secretariat Office, P.O. & P.S. Imphal, District – Imphal West, Manipur-795001.
4. The Commissioner/Secretary (Finance), Government of Manipur, Secretariat Office, P.O. & P.S. Imphal, District-Imphal West, Manipur-795001.
5. The Director, Education (S), Government of Manipur at Lamphelpat, P.O & P.S. Lamphel, Imphal West District, Manipur.

.... Respondents

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. L. Anand, Advocate
For the respondents	:	Mr. S. Nepolean, Govt. Advocate Mr. S. Suresh, Advocate
Date of hearing	:	07.05.2024
Date of order	:	19.07.2024

JUDGMENT & ORDER
(CAV)

(Golmei Gaiphulshillu, J)

[1] Heard Mr. L. Anand, learned counsel appearing on behalf of the appellants; Mr. S. Nepolean, learned Government Advocate appearing on behalf of the State respondent Nos. 1, 4 & 5; and Mr. S. Suresh, learned counsel appearing on behalf of respondent Nos. 2 & 3.

[2] The instant writ appeal has been filed challenging the impugned judgment and order dated 25.07.2019 passed in W.P.(C) No. 690 of 2010 by the Ld. Single Judge with the following prayer:

- (i) to admit the appeal and call for the records of WP(C) No. 690 of 2010;*
- (ii) to examine the documents/records and to set aside the impugned Judgment and order passed on 25.07.2019 by the Ld. Single Judge in WP(C) No. 690 of 2010;*
- (iii) to direct the respondents to refund the deducted amount of Rs. 91936.00 (Ninety one thousand nine hundred and thirty six only) and Rs. 1,40,787 (one lakh forty thousand seven hundred eighty seven only) to the appellants/petitioners No. 1 and 2 respectively;*
- (iv) to pass any appropriate orders/ order which the Hon'ble Court may deem fit and proper for the ends of justice.*

[3] The appellants/petitioners are the retired Primary Teacher who were initially appointed under the Department of Education(S), Government of Manipur vide different orders issued by the State Government. From time to time, the service conditions of the appellants/petitioners were upgraded and enjoyed senior scale of pay upon considering their length of service in the grade and were also allowed to enjoy revised pay of scale from time to time attached to their respective post, by the respondents and for no fault or misrepresentation on the part of the appellants/petitioners. As such, the appellants/petitioners were allowed to enjoy (Pre-revised) scale of pay under R.O.P Rules, 1990 vide orders bearing No. 8/2/92-ED dated 31st March, 1992; 8/1/92-ED, dated 28th March, 1992; 8/30/80-ED(VI) dated 22nd March, 1992 and No. 46/2/87-ED (Jr) (III) dated 26th May, 1992 respectively.

Upon attaining their age of superannuation the appellants/petitioners retired from their service on 18th April, 2008; 8th May, 2008; 25th October, 2008 and 24th June, 2006 respectively, accordingly, the authority concerned had also issued respective orders to that effect. To the utter shock and surprise, after one and half years of retirement from their services, the Sr. Accountants Officer/Pension, Accountant

General, Manipur issued the impugned letters addressed to the Joint Secretary (Pension Cell, Government of Manipur) bearing No. Pen/I-647/S/W/2009 dated 3.06.2009, No. Pen/I-629/S/W/2009 dated 07.09.2009, No. Pen/I-680/S/T/IW/2009 dated 07.09.2009, and No. Pen/I-638/S/Z-I/2009/4421 dated 13.05.2009 stating that the above referred orders were issued with retrospective effect without Finance Concurrence and as such the orders should be treated as null and void in terms of the impugned Finance Department O.M No. 18/05-2005-FD(PIC) dated 10.10.2005. On the basis of the O.M. dated 10.10.2005, the respondents deducted an amount of Rs. 91,936/- (Ninety one thousand nine hundred and thirty six only), Rs. 2,05,226/- (Two lakh five thousand two hundred twenty six only), Rs. 1,72,703/- (One lakh seventy two thousand seven hundred and three only) and Rs. 1,40,787/- (One lakh forty thousand seven hundred and eighty seven only) respectively from the appellants'/petitioners' pensionary/retirement benefits, on the pretext of overdrawal of pay and allowances after retirement from their respective services.

Being aggrieved by the action of the respondents, the appellants/petitioners file a writ petition being W.P.(C) No. 690 of 2010 praying for a direction to the respondents to refund

the aforesaid amount which was deducted from the pensionary/retirement benefits of the appellants/petitioners. However, the Ld Single Judge after hearing the parties dismissed the said writ petition vide order dated 25.07.2019. Hence, the present writ appeal is filed for setting aside of the Judgment and order dated 25.07.2019 passed in WP(C) No. 690 of 2010 and also praying for allowing the relief sought therein.

[4] The learned counsel for the petitioner contended that the pre-revised scale of pay under R.O.P. Rules, 1990 and subsequent revision of pay were issued from time to time by the Education Department and the appellants/petitioners were allowed to enjoy the same and that the applicable qualification scales issued vide Government orders were also enjoyed by the appellants/petitioners, while they were in service. And that the impugned O.M dated 10.10.2005 and subsequent letters dated 03.06.2009, 07.09.2009 and 13.05.2009 were issued long after the appellants/petitioners had already enjoyed the entitled pay scale, qualification scale in view of the numerous orders of the respondents and after retirement from their services.

[5] The learned counsel for the petitioners further contended that, in the impugned O.M dated 10.10.2005, there is no specific instruction or direction as to when the same may be

given effect to. And the appellants/petitioners came to know of the existence of the impugned O.M only when they received the impugned letters dated 03.06.2009, 07.09.2009 and 13.05.2009, creating the whole problem and thus the petitioners should not be made to suffer for the fault/mistake committed by the Government respondents.

He, further, contended that that action and conduct of the respondent Government of deducting the undisputed amount of Rs. 91,936/- (Ninety one thousand nine hundred and thirty six only), Rs. 2,05,226/- (Two lakh five thousand two hundred twenty six only), Rs. 1,72,703/- (One lakh seventy two thousand seven hundred and three only) and Rs. 1,40,787/- (One lakh forty thousand seven hundred and eighty seven only) respectively from the appellants/petitioners from their pensionary/retirement benefits, on the pretext of overdrawal of pay and allowances after retirement is highly illegal, arbitrary.

[6] In support of his case, the learned counsel for the petitioners relied upon the following cases:

1. AIR 2015 SC 696 (State of Punjab and others –versus- Rafiq Masih),
2. (1994) 2 SCC 521 (Shyam Babu Verma and others – versus- Union of India and others)

3. And also judgment passed by the Hon'ble Gauhati High Court in Writ Appeal No. 57.

[7] On perusal of the impugned order, the Hon'ble Single Judge declined the relief sought for by the petitioners.

The relevant portions of the order dated 25.07.2019 read as follows:

"7. The consent letters as above given by the petitioners is not reflected in the writ petition and they have not disclosed their consent letter for recovery of the amount drawn in excess in the affidavit and petition. This amounts to suspension of material fact.

8. The petitioners have voluntarily made representations to the authority concerned giving their consent for deduction of the over payment of the pay and benefits from the amount payable to the petitioners for the service period. Consequent to retirement, no specific plea has been made by the petitioners that there is undue influence and coercion. There is no reference of giving such letters in the writ petition. The petitioners are not entitled to any relief. Since the recovery order has been made pursuant to the unconditional consent letters of the petitioners, the question of refunding the deducted amount does not arise. There is no merit in the writ petition. The petitioners by their own conduct are disentitled to the relief sought for."

But, it is not a case of the respondent authorities that the petitioners had played fraud or misrepresented and got their pay fixed at the higher scale. Overpayment of pay and allowances cannot be treated as Government dues, but non-clearance of Quarters or house rent, service loan or loans of any kind which the employee availed while in service and couldn't be cleared, can be treated as Government due. However, in the

instant case it is not so therefore, the petitioners prayed for a direction to refund the deducted amount of money of Rs. 91,936/- (Ninety one thousand nine hundred and thirty six only), Rs. 2,05,226/- (Two lakh five thousand two hundred twenty six only), Rs. 1,72,703/- (One lakh seventy two thousand seven hundred and three only) and Rs. 1,40,787/- (One lakh forty thousand seven hundred and eighty seven only) respectively.

[8] Most importantly, in the instant case, it is not disputed that the appellants/petitioners are the primary teachers in the Education Department and got retired in the year 2006 and 2008 respectively almost two decades back.

[9] It is well settled that the pension is not the bounty, but a hard earned benefits/money of an employee, who has put in long and dedicated service till their age of retirement. The same principle would hold good for other retirement benefits also. It is no doubt true that the appellants gave their consent in the aforesaid consent certificates, agreeing to the deduction of Government dues from their retirement gratuity or from other pension benefits payable to bank, however, merely because their consent were given by them 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 in a position to bargain and would be inclined to give consent so that his/her retirement benefits are processed expeditiously. Therefore, the mere fact that the petitioners gave their consent is not sufficient in itself to hold against them and gave the authorities a clean chit for their arbitrary and wholly unsustainable it.

[10] Normally/obviously, if the retiring staff refused to sign in the consent letter, the pension proposal could not be processed. Therefore, face with that situation only, the employee is signing, in the instant case, as rightly argued by the learned counsel for the appellants/petitioners, the petitioners are at that stage are bound to sign said letters against their will for speedy sanction of their pension proposal. Thus, the case of the respondents that base on the consent letter was made cannot be countenance.

[11] In **(1994) 2 SCC 521 (Shyam Babu Verma & Ors. -versus- Union of India & Ors.)**, wherein the Hon'ble Supreme Court held that:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 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."

[12] In **AIR 2015 SC 696 (State of Punjab and others – versus- Rafiq Masih)**, the Hon'ble Supreme Court at para 18 held that:-

"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 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 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 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 for outweigh the equitable balance of the employer's right to recover."*

[13] The observation made by the Hon'ble Supreme Court is squarely applicable to the case in hand, as some of such observation are that where recovery is impermissible in law are:-

(i) Recovery from the employees belongings 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 period in excess of five years, before the order of recovery is issued.

[14] In the present case, since the petitioners hold a Class – III post before their retirement and since any alleged excess payment has been made more than four decades back, we are of the considered view that it is not permissible to make any recovery from the retirement benefits of the petitioners on the ground of excess payment of pay and allowances, in view of the Principals laid down by the Hon'ble Apex Court referred to herein above.

[15] In the result, taking into consideration the facts and circumstance of the present case and discussions and reasons given herein above and keeping in view the orders and observations made by the Hon'ble Apex Court, we are of the view that the order of the Hon'ble Single Judge impugned herein is bad in fact as well as in law. Accordingly, the order of the Hon'ble Single Judge is set aside and the present appeal is

allowed with direction to the respondents to refund the deducted amount of money of Rs. 91,936/- (Ninety one thousand nine hundred and thirty six only), Rs. 2,05,226/- (Two lakh five thousand two hundred twenty six only), Rs. 1,72,703/- (One lakh seventy two thousand seven hundred and three only) and Rs. 1,40,787/- (One lakh forty thousand seven hundred and eighty seven only) respectively to the appellants/petitioners, within 2(two) months from the date of receipt of a certified copy of this order.

[16] With the above, the present writ appeal is disposed of. Parties are to bear their own costs.

JUDGE

CHIEF JUSTICE

FR/NFR

Lucy