

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WA No. 116 of 2023

1. The State of Manipur represented by the Commissioner Minor Irrigation Department, Government of Manipur Secretariat, P.O and P.S. Imphal, Imphal West District, Manipur-795001.
2. The Chief Engineer, Minor Irrigation Department, Government of Manipur.

.... Appellants

-Versus-

1. Shri Leishangthem Chandrakeshore Singh, aged about 62 years, S/o (L) L. Chaoba Singh, resident of Tera Sapam Leirak, P.O & P.S. Lamphel, District Imphal West, Manipur - 795001.

.... Principal Respondents

2. The Principal Accountant General, office of the Accountant General (A&E) Manipur, Babupara, P.O & P.S. Imphal, Imphal West District, Manipur – 795001.

.... 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. Athouba Khaidem, Govt. Advocate

For the respondents : Mr. L. Anand, Advocate
Mr. S. Suresh, Advocate

Date of hearing : 07.05.2024

Date of order : **19.07.2024**

JUDGMENT & ORDER
(CAV)

(Golmei Gaiphullshillu, J)

[1] Heard Mr. Athouba Khaidem, learned Government Advocate appearing on behalf of the appellants; Mr. L. Anand, learned counsel appearing on behalf of respondent No. 1; and Mr. S. Suresh, learned counsel appears on behalf of respondent No. 2.

[2] The present writ appeal has been filed by the State Appellants under IV-A of the Manipur High Court Rule, 2019 against the impugned Judgment and Order dated 02.08.2023 passed in WP(C) No. 729 of 2019 by the Hon'ble Single Judge with the following prayer:

- (i) to admit the Appeal and call for records of the Writ petition;*
- (ii) to set aside the impugned judgment and order dated 02.08.2023 passed in WP(C) No. 729 of 2019 as the same was passed without appreciating the materials of the case.*
- (iii) to pass any appropriate order(s) or direction which the Hon'ble Court deems fit and proper.*

[3] The above referred to W.P.(C) No. 729 of 2019 was filed by the respondent No.1/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 refund the official respondents to refund the said amount with admissible interest.

[4] The learned counsel for the respondent No. 1/petitioner was initially appointed as Road Mohorir in Minor Irrigation Department, Government of Manipur in the Scale of pay of Rs. 215-340 on 14.05.1980 and was retired from his service on 28.02.2017 on attaining the age of superannuation. After his retirement, the pension paper was submitted to the authorities for processing his entitled retiral benefits. In due course of time, the office of the respondent no.2/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. He 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 respondent No. 1/petitioner there was 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 respondent no.1/petitioner which would be impermissible in law. In fact, the aforesaid deduction made the respondent no. 1/petitioner to suffer from untold miseries and hardships. Being aggrieved by the action of appellants/respondents, the respondent No. 1/petitioner submitted a representation on 19.08.2019 requesting refund of the said amount. Though the said representation was duly received by the office of the appellants, no action has been taken till date.

[6] According to the respondent No. 1/petitioner that the alleged overpayment by the official appellants/respondents was not on account of any misrepresentation or fraud on the part of the respondent no.1/petitioner. Therefore, the respondent no.1/petitioner cannot be held liable and made to suffer for the wrong committed by the officials. The respondent no.1/petitioner is presently facing lot of hardship for survival with the meager retirement benefits he is receiving after the deduction/recovery made by the appellants/respondents authorities. Thus, a prayer has been made to dismiss the appeal as devoid of merit and to pass an appropriate order for the ends of justice.

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

1. (2015) 4 SCC 334 – [State of Punjab & Ors v. Rafiq Masih (White Washer) & Ors. – Para- 5, 6, 7, 8, 16 and 18]
2. (2009) 3 SCC 475 – [Syed Abdul Qadir & Ors v. State of Bihar & Ors. Para-59, 60 and 61]
3. (1994) 2 SCC 521 – [Shyam Babu Verma and Ors v. Union of India & Ors. Para – 11]
4. (1995) Supp (1) SCC 18 – [Sahib Ram v. The State of Haryana. Para – 5]

5. Judgment & Order passed by the Ld. Division Bench of the Hon'ble Court in W.A No. 121 of 2022 on 16.12.2022 – para. 12.
6. Dismissal order passed by the Hon'ble Supreme Court in S.L.P (C) No.(s). 4798/2023 on 20.03.2022.
7. (2012) 8 SCC 417 [Chandi Prakash Uniyal & Ors – v. The State of Uttarkhand & Ors. Para – 11 and 12]
8. (2014) 8 SCC 883 – [State of Punjab & Ors v. Rafiq Masih (White Washer) & Ors. – Para- 6, 8, 13 and 14]
9. (2024) 8 SCC 883 – [Iveco Magirus Brandschutztechnik Gmbh V. Nirmal Kishore Bhartiya and another. Para -55]
10. (2022) LiveLaw (SC) 438 – [Thomas Daniel v. The State of Kerala. Para – 12, 13 and 14]

[7] The learned counsel for the respondent No.2/third respondent submitted that on scrutiny of pension papers and service records of the respondent No.1/petitioner, it was found that the respondent No.1/petitioner was appointed as Road Mohorir in the Scale of pay of Rs. 215-340/- w.e.f 14.05.1980. Under ROP 1999, the pay of the respondent no.1/petitioner was fixed in the scale of pay of Rs. 3050-4590/- w.e.f. 01.01.1996. He was granted ACP-I in the scale of pay of Rs. 4000-100-6000/- and his pay was fixed at Rs. 4500/- on 01.07.2005 and ACP-II in the scale of pay of Rs. 5000-150-8000 and his pay was fixed at

Rs. 5,000/- on 01.07.2005. However, as per condition 8 of the conditions for grant of benefits under the ACP Scheme as contained in Annexure-I to the office memorandum dated 20.07.2005 issued by the Government of Manipur, Finance Department, the financial up gradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in the grade/category of posts without creating new posts for the purpose. .

[8] The learned counsel for the respondent No. 2/third respondent further submitted that when the respondent No.1/petitioner was entitled to financial up gradation under ACP-I and ACP-II w.e.f. 01.07.2005, his pay should have been fixed at Rs. 4,475/- 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 Rules, 1999 and in ACP-II his pay should have been fixed at Rs. 4,600/- 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. 5,000/- in the scale of pay of Rs. 5000-8000/-. He further submitted that consequent on revision of pay under ROP 2010, the pay of the respondent No.1/petitioner was fixed at Rs. 9,300/- in the pay band of Rs. 9300-34800/- with grade pay of

Rs. 4,200/- w.e.f. 01.01.2006 which should have been fixed at Rs. 8,560/- in pay band of Rs. 5200-20200/- with grade pay of Rs. 2,400/- w.e.f. 01.01.2006. Due to non-fixation of pay to the corresponding higher scale of pay while granting financial up gradation under ACP-I and ACP-II respectively and the non-fixation of pay in the corresponding pay band of Rs. 5200-20020/- with grade pay Rs. 2400/- w.e.f. 01.01.2006 under ROP Rules, 2010, there was overpayment of pay and allowances amounting to Rs. 5,82,002/-.

[9] The learned counsel for the respondent No. 2/third respondent further submitted that the said irregularities was intimated to the Chief Engineer, Minor Irrigation Department, Government of Manipur on 28.06.2017. Pursuant to the said letter, the Chief Engineer submitted the service book of the individual and the order dated 28.08.2017 for recovery of excess payment of pay and allowances amounting to Rs 5,82,002/- vide letter dated 30.08.2017.

[10] The learned counsel for the respondent No.2/ third respondent further submitted that on the basis of the consent certificate given by the respondent No.1/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 respondent no.2/third respondent settled the retiral benefits of the respondent no.1/petitioner after adjusting the amount of Rs. 5,82,002/- being overpayment of pay and allowances from the retirement gratuity of the respondent No.1/petitioner.

[11] The learned counsel for the respondent No.2/third respondent further submitted that the officer of Accountant General/Principal Accountant General performs his/her duties within the parameters laid down by the Comptroller and Auditor General of India in accordance with the provision of the Constitution of India read with Comptroller and Auditor General's (Duties, Powers and Conditions of Services) Act, 1971 (DPC Act, 1971 for short). The action of the respondent no.2/third respondent is in accordance with the provisions of Rule 70(A), 71(2) and 73(3) of Manipur Civil Services (Pension) Rule, 1977. He further submitted that the Principal Accountant General/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 respondent No.2/third respondent that in accordance with Rule 70(A), 71(2) and 73(3)

of Manipur Civil Services (Pension) Rule, 1977 read with the GI decision no. 6 below Rule 73 of the MCS (Pension) Rules, 1977, the respondent No.2/third respondent settled the pension by deducting overpaid pay and allowances amounting to Rs. 5,82,002/-.

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

1. (2012) 8 SCC 417 - [Chandi Prasad Uniyal and others v. State of Uttarkhand and others. Para- 13, 14]
2. (2014) 8 SCC 883 – [State of Punjab & Ors v. Rafiq Masih (White Washer) & Ors. – Para- 6, 7, 8, 11, 12]
3. (2016) 14 SCC 267 – [High Court of Punjab & Haryana v. Jagdev Singh – para – 3, 11]
4. (2008) 12 SCC 481 – [K.D. Sharma v. State Authority of India Ltd. para – 34, 36, 38, 39]
5. (2020) 4 SCC 1 – [Dr. Shah Faesal and Ors v. Union of India and anr. – para – 23]
6. (2021) 12 SCC 1 – [S. Kasi v. State through Inspector of Police – para – 35, 36]
7. (1992) Sup 3 SCC 62 – [Vikramjit Singh v. State of Madhya Pradesh – para – 3]
8. (2010) 9 SCC 385 – [Jai Singh and Ors v. MCD – para -37]
9. (2020) 3 SCC 133 – [P. Singaravelan v. Collector, Tiruppur – para – 18.2]

10. (1991) 4 SCC 139 – [State of U.P. and anr vs. Synthetics and Chemicals Ltd. and anr – para - 41]
11. (2002) 3 SCC 496 – [Haryana Financial Corporation and other vs. Jagdamba Oil Mills & Anr – para – 21, 22]
12. (2005) 2 SCC 673 – [Central Board of Dawoodi Bohra Community and anr v. State of Mahasrashtra and anr – para – 7]
13. (2020) 4 SCC 1 – [Dr. Shah Faesal and ors v. Union of India and anr – para – 28]
14. (2005) 3 SCC 409 – [Karnataka State Road Transport Corporation and anr vs. S.G. Kotturappa and anr – para - 24]
15. (2007) 13 SCC 352 – [Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions Vs Pindiga Sridhar and ors – para - 7]
16. (2010) 1 SCC 417 – [Amarjeet Singh and ors v. Devi Ratan and ors – para - 28]
17. (2022) 2 SCC 221 – [Arce Polymers Pvt. Ltd. v. Alpine Pharmaceuticals Pvt. Ltd. and ors – para – 16, 20]

[12] In the above referred to WP(C) No. 729 of 2019, the Hon'ble Single Judge passed the impugned order dated 02.08.2023, the relevant portion of the order reads as follows;

"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."

[13] Being aggrieved by the order dated 02.08.2023, the State appellants has preferred the present appeal. The appellants contended that the impugned judgment suffers from serious error of facts and law as the impugned judgment has been passed without considering the point raised by the respondent. No. 2/third respondent. As per the appellants, the Hon'ble Single Judge has failed to appreciate the undisputed factual position that the respondent No.1/petitioner was wrongly given higher pay scales under ACP-I and ACP-II which was not entitled to him at the relevant point of time and as such he was given higher pay scale in violation of the Rules. He further contended that it will cause irreparable loss to the State Exchequer if the amount of Rs. 5,82,002/- is refunded to the respondent No.1/petitioner.

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

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

"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.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abul Qadir case and in Col. B.J. Akkara case, the excess payment made due to wrong/irregular pay fixation can always be recovered.

16. The appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order that the excess payment made be recovered from the appellants salary in twelve equal monthly installments starting from October, 2012."

2. **(2016) 14 SCC 267 – [High Court of Punjab & Haryana vs. Jagdev Singh]**

"7. The respondent challenged the action for recovery in writ proceedings under Article 226. The petition was allowed by the impugned judgment of

the High Court. The High Court found substance in the grievance of the respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part.

8. *The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter-affidavit which has been filed by the respondent in these proceedings, this position has been specifically admitted. Subsequently, when the Rules were revised and notified on 07-05-2003 it was found that a payment in excess had been made to the respondent. On 18-02-2004, the excess payment was sought to be recovered in terms of the undertaking.*

12. *For these reasons, the judgment of the High court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments. We direct that the recovery be made in equated monthly installments spread over a period of two years."*

3. (2008) 12 SCC 481 – [K.D. Sharma vs. Steel Authority of India Ltd. & Ors]

"52. the appellant has not come forward with all the facts. He has chosen to state the facts in the manner suited to him by giving an impression to the writ court that an instrumentality of State (SAIL) has not followed doctrine of natural justices and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief...."

[14] The learned counsel for the respondent No. 1/petitioner submits that due to erroneous fixation of the pay scale of the respondent No. 1/petitioner which had occurred during the year 2005-2006 was not on the fault,

misrepresentation or fraud of the petitioner but because of the fault of the appellants/respondents. The arbitrary action of the respondents of making recovery, after retirement of the petitioner from a Class-III service, the excess payment which had occurred more than 10 years before the actual recovery was made in 2017 is highly iniquitous, unjustifiable and arbitrary and causing untold hardships and miseries to the retired petitioner and his family.

[15] The learned for the respondent No. 1/petitioner further submits that it has become a general norm in the State of Manipur where retired employees are compelled to a letter/consent/undertaking of no-objection to recovery of any excess payment, against their conscience, for speedy sanction of their pension proposals. In such a situation, if the retiring or retired staff refused to give the kind of letter/consent/undertaking as aforesaid, the pension proposal could not be processed. He further submits that the said consent letter was signed by the respondent no.1/petitioner against his will for speedy sanction of his pension proposal.

In support of his case, he relied upon section 16 of the Indian Contract Act, 1872, which reads as follows:

“16.

(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of the another-

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other;”

He, further, submits that 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.

[16] 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 Road Mohorir in Minor Irrigation Department on 14.05.1980 and retired from service at the same post on 28.02.2017 on attaining the age of superannuation. Statement dated 13.10.2017 (showing the calculated amount entitle to the respondent no.1 issued by the office of the Accountant General (A&E), Manipur, Imphal) is extracted herein below:

*"OFFICE OF THE ACCOUNTANT GENERAL (A&E)
MANIPUR. IMPHAL-795001
(PENSION PAYMENT ORDER)
PART-1*

P.P.O No. 111709863

Debitable to Govt. of Manipur

Head of Accounts "2071-Pension and other Retirement Benefits".

1. *"UNTIL FURTHER NOTICE, and on the expiration of every month,
be pleased to pay to Shri/Smt **L. CHANDRAKESHORE SINGH** Rs. 7555:00 (Rupees Seven Thousand Five Hundred Fifty Five) only*

Under Rupees Seven Thousand Five Hundred Fifty Six ONLY

the Pension as set out in part-II of this order plus the amount of dearness relief as admissible from time to time thereon after due identification of the pensioner, the payment of pension should commence from 01/03/2017

2. *In the event of death L. CHANDRAKESHORE SINGH*

Family pension of Rs. 7555.00 Rupees Seven Thousand Five Hundred Fifty Five only per month may be paid to L. MERATOMBI DEVI spouse(s) from the day following the date of death of pensioner tilt the expiry of 7 years on completion of 67 years of age, had the retiree survived whichever is earlier, and thereafter at the rate of Rs. 4533.00 subject to the conditions specified in the Special Instructions to TOs Rupees Four Thousand Five Hundred Thirty Three ONLY

3. *The Income Tax where deductible, should be deducted at source Under Rupees Four Thousand Five Hundred Thirty Four ONLY*

*Signature
(Sr.) Accounts Officer (Pen)*

Sd/-

(13.10.2017)

Pension Payment order issuing Authority

*To
The Dist Treasury Officer
IMPHAL WEST*

PART - II

PPO NO. 111709863

1. Name of the Govt. Servant SHRI L. CHANDRAKESHORE SINGH		2. Post Held ROAD – MOHORRIR Pay Band: 9300-34800 GP-4200	
3. Office EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION-I M.I. DEPT. MANIPUR			
4. Residential Address Sagolband Tera Sapam Leirak			
5. Date of birth of Govt. Employee 01/03/1957	Date of Appointment 14/05/1980	Date of retirement 28/02/2017	Date of death
6. Class of pension Superannuation Pension		Gross Qualifying Service 36 y-9 M-18 D	Net Qualifying Service 33 YEARS
7. Average Emoluments	Emoluments of Pension Rs. 15110	Emoluments for RG Rs. 33091	Last Pay drawn Rs. 15110
8. Amount of pension Rs. 7555	Pension withheld Rs. NIL	Commuted pension Rs. 3022.00	Net pension Rs. 4533

9. Provisional Pension paid @ NIL

Rs. Which is to be adjusted p.m.

From

10. Provisional Death-cum-Retirement Gratuity already paid/Authorised is to be adjusted

11. Amount of family pension:

(a) Enhanced rate Rs. 7555.00 Please see clause 2 on page 1

(b) Normal rate Rs. 4533.00

12. Details of family members eligible for family pension :

Sl. No.	Name	Relationship with Govt. Employee	Date of birth	Whether handicapped
1.	L. MERATOMBI DEVI	WIFE	01/03/1965	N
2.	L. PADAMARANI DEVI	DAUGHTER	01/02/1987	N
3.	L. RANIBALA DEVI	DAUGHTER	03/01/1992	N

Special Remarks

Overpayment of pay and allowances amounting of Rs. 36,000/- will be recovered from the ____relief of the pensioner.

Sd/-

Sr. Accountant General
Office of Accountant General
(A&E)
Manipur Imphal

PPO No. 111709863

No. Press1//3141712832/1/19 L. Chandrakeshore Singh dated 13-10-017

1st Pension @ Rs. 7555 w.e.f. 01-03-017 to 31-10-017 = Rs. 60,440=00

119% X 7555 DR Rs. 8991 w.e.f. 01-03-017 to 31-05-017 =Rs. 26,973=00

125% X 7555 DR Rs. 9444 w.e.f. 01-06-017 to 31-10-017 = Rs. 47200=00

MA 300 w.e.f. 01-3-017 to 31-10-017 = Rs. 2400=00

Total- Rs. 1,37,033=00

Recovery for the relief of Pensioner Rs. 36000=00

Pay Rs. 101033/- (Rupees one lakh one thousand and thirty three) only

(ii) GPO No. 121709863 ----- dated 18-09-2017

<i>Gratuity</i>	<i>Rs. 546,000=00</i>
<i>Less Govt due O.P.(-)</i>	<i>Rs. 582002=00</i>
	<i>-Nil-</i>
<i>Over Payment Pay and</i>	
<i>Allowances will be recovered for pensioner</i>	
<i>Rs. 36,000/-</i>	

(iii) CPO No.: 131709863 Dated 18-09-2017

Pay Rs. 297148/- (Rupees two lakhs ninety seven thousand on hundred forty eight) only.

Commutated value 3022/-
Sd/-
Sr. Accountant"

But, the appellant authority deducted/recovered a sum of Rs. 5,82,002/- from the total amount entitled to the respondent No. 1/petitioner as excess payment/overpayment.

[17] From the material placed before us, it is evident that the respondent no.1 was appointed in the year 1980 on regular basis as Road Mohorir and retired in the same post in the year 2017 i.e. for 37 years rendered his service for the Govt. of Manipur. Even after almost 20 years, the appellant/respondent failed to take initiative to modify or revoked the said impugned statement dated 13.10.2017 issued by the Accountant General on which basis a sum Rs. 5, 82,002/- 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.

[18] 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.

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

[20] For the reasons mentioned above, in our view, the learned Single Judge rightly passed the impugned order wherein the learned Single Judge set aside 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/- 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. 5,82,002/- to the respondent No. 1/petitioner.

[21] Accordingly, the present writ appeal is dismissed with direction that the appellants and respondent No. 2 are to refund the deducted amount of Rs. 5,82,002/-(Rupees five lakh eighty two thousand and two) to the respondent No. 1/petitioner within a period of 2 months from the date receipt of a copy of this order.

No order as to costs.

JUDGE

CHIEF JUSTICE

FR/NFR

Lucy