

GAHC030004422022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/106/2022

Remlalnghaka and 84 Ors.
Dept. of Political Science,
Govt. Lawngtlai College.

2: R. Lalrammuani

3: T. Elis Pumzalam

4: R. Lalrammuani

5: Lalzarmawia

6: P. John Tualzamang

7: Grace Lalnunpuii

8: Jamkhokam Touthang

9: Mary Lalngaihawmi

10: H. Lalbiakzuali

11: C. Laldinsanga

12: CVL Tlanhlua

13: Lianhlupuii

14: Dr. Mary Anne Lalbiakhlui Zadeng

15: Lalrosangi

16: Lalrammuana Chawngthu

17: Lalfakawma

18: Vanthangpuii

19: C. Lalremchhunga

20: Dr. H. Lalnunmawii

21: H. Lalmangaihzuai

22: Dr. Lalmuanawma Chhangte

23: Dr. Lalmuanpuii Khiantge

24: R. Lalrochama

25: Lalchangliana

26: Lynda Vanlalruati

27: Dr. B. Lalfakawmi

28: Theresa Zothanpuii

29: C. Laldampaia

30: Dr. Zarzoliana

31: H. Lalthanpuii

32: K. Vanlalthaa

33: Zohmingliana

34: Dr. Lalzarmawii

35: Anthony Vanlarawna

36: Benjamin Lalduhawma

37: Thanchhungi Hmar

38: Dr. Lalsangzuala Khiangte

39: Dr. Vanlalngaii

40: Rebecca Lalmangaihi

41: Zolianzuali

42: Dr. B. Vanlalthlana

43: Elizabeth L. Hmar

- 44: Lalremveli Chenkual
- 45: Ngurhmingliani Sailo
- 46: Prof. Chawngsailova
- 47: Thuamliani Renthlei
- 48: Lalsangpuii
- 49: K.I. Singh
- 50: O.R. Singh
- 51: Dr. B.K. Malik
- 52: R. Lalthakimi
- 53: Christopher J.Z. Lawlor
- 54: Dr. C. Laldawngliana
- 55: Dr. Lalnunpuia
- 56: Lalthanpuia
- 57: Zothantluangi
- 58: C. Lalnunpuii
- 59: Prof. B. Zoliana

60: Laltanpuia

61: Laltluangkimi Hnamte

62: Dr. Lalzahawmi Chenkual

63: Zodinpuii

64: Lalrinmawia

65: Dr. Zirlianngura

66: Parijat Kumar

67: Dr. Rosangliana

68: Lalrammawii

69: Vanlallawmi

70: Lalrinsangi Nghinglova

71: C. Zarzokima

72: Zonunthari

73: R. Lalramengzami

74: Remlalsiama

75: Dr. Lawrence Zonunmawia

76: Bridget B. Selvy

77: Mary Lalromawii

78: James RT Khuma

79: Lalsiamthanga

80: Lalremsiami

81: Zodinsangi

82: C. Laldintluanga

83: Zomuani Cherput

84: Vanlalpeka

85: Laldinpui

VERSUS

The State of Mizoram and 4 Ors.
Aizawl. 2:The Commissioner/Secy.
Finance Deptt.
GOM

3:The Commissioner/Secy.
Higher and Technical Deptt.
GOM

4:The Director
Higher and Tehcnical Deptt.
GOM

5:The Chief Controller of Accounts

Accounts and Treasury Deptt. GO

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Mrs. H Lalmalsawmi, (Addl.AG/GA Mizoram) for R1-R5

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 03.04.2024

Date of Judgment : 10.04.2024

J U D G M E N T & O R D E R

Heard Mr. A.R. Malhotra, learned counsel for the petitioners and Mrs. H. Lalmalsawmi, learned Govt. Advocate who appears for all the respondents. The writ petitioners have filed the instant writ petition with the following prayer:-

“In the premises it is most humbly prayed that your Lordships may graciously be pleased to admit this petition, call for the records and issue rule calling upon the Respondents to show cause as to why the impugned Office Memorandum Memo No.G.12017/1/2011- FIN(PRU) dt.11/2/2014 (Annexure - 5) issued by the Respondent No.2 alongwith the impugned Letter No.A.19057/2/2014- CCA/ENT/GEN dt.19/7/2022 (Annexure – 10) issued by the Respondent No. 5 and the impugned action of the Respondents in directing the Petitioners to pay-back/recover the excess drawal of pay, if any, with effect from 1/1/2017 to 31/12/2021 shall not be set aside and quashed and after hearing the parties be further pleased to make the rule absolute by setting aside the impugned Office Memorandum Memo No.G.12017/1/2011-

FIN (PRU) dt.11/2/2014 (Annexure - 5) alongwith the impugned Letter No.A.19057/2/2014-CCA/ENT/GEN dt.19/7/2022 (Annexure - 10) and to pass any other order(s) as your Lordships' may deem fit and proper.

-AND-

In the interim be further pleased to pass an order directing the Respondents not to initiate refund/recovery of the excess drawal of pay with effect from 1/1/2017 to 31/12/2021 from the Petitioners till final disposal of the writ petition."

[2.] The petitioners are all working either as Associate Professors or Professors in different Government Colleges all over Mizoram under the Mizoram Higher & Technical Education Department, Govt. of Mizoram. It is the case of the petitioners that the Govt. of India in the Ministry of Finance vide Notification dated 29.08.2008 in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and Clause (5) of Article 148 of the Constitution after consultation with the Comptroller & Auditor General in relation to persons serving in the Indian Audit and Accounts Department notified the Central Civil Services (Revised Pay) Rules, 2008 (Revised Pay Rules of 2008) which came into force from 01.01.2006. Similarly, the Govt. of Mizoram in the Finance Department (Pay Research Unit) vide Notification dated 06.08.2010 notified the Mizoram (Revision of Pay) Rules, 2010 (ROP Rules of 2010). The notification was issued in exercise of the powers conferred by proviso to Article 309 read with Article 162 of the Constitution of India by the Governor of

Mizoram. Clause 10 of the ROP Rules of 2010 provides for the date of next increment in the revised pay structure. It provides that there will be uniform date of annual increment namely, 1st July of every year. Clause 10 of the ROP Rules of 2010 may be abstracted hereunder:-

“10. Date of next increment in the revised pay structure

There will be a uniform date of annual increment, viz, 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment.

Provided that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 2006, the next increment in the revised pay structure shall be allowed on the 1st day of January, 2006. Thereafter, the provision of Rule 11 would apply.

Provided also that for those employees whose date of next increment falls on 1.1.2006, the instructions already provided for granting an increment in the pre-revised pay scale as on 1.1.2006 and then fixing their pay in the revised pay scales. Such Government servants would also get their next increment on 1.7.2006.

Provided further that in cases where an employee reaches the maximum of his pay band, shall be placed in the next higher pay band after one year of reaching such a maximum. At the time of placement in the higher pay band, benefit of one increment will be provided. Thereafter, he will continue to move in the higher pay band till his pay in the pay band reaches the maximum of PB-4, after which no further increments will be granted.

Note - *In case where two existing scales, one being a promotional scale for the*

other, are merged, and the junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, happens to draw more pay in the pay band in the revised pay structure than the pay of senior Government servant in the existing higher scale, the pay in the pay band of the senior government servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with Rule 10."

[3.] However, while implementing the Revised Pay Rules of 2008, the Central Govt. employees who were due to get their annual increments between February to June during 2006 having been deprived of one (1) increment, the Govt. of India in the Ministry of Finance, Department of Expenditure issued an Office Memorandum dated 19.03.2012 relaxing Rule 10 of the Revised Pay Rules of 2008 and granting one (1) increment to those central government employees who were due to get their annual increment between February to June, 2006 as a one-time measure while providing that next increment in the revised pay structure will be on 01.07.2006. The Office Memorandum was issued in exercise of the powers conferred upon the President of India by the Revised Pay Rules of 2008 more particularly, Rule 16. Similarly, the Govt. of Mizoram in the Finance Department came with an Office Memorandum dated 09.01.2014 granting similar benefit of one (1) increment to those employees whose increment were due between February to June, 2006 and the increment which fell due was granted only with effect from 01.01.2014 and that the next date of increment would be on 01.07.2014. The

Office Memorandum dated 09.01.2014, was issued in exercise of the powers conferred upon the Governor of Mizoram by Rule 22 of the ROP Rules of 2010.

[4.] The petitioners were enjoying their respective pay with the increment that was granted to them but when Pay Slip was issued to them on 21.02.2022, the same came with an additional instruction stating that the compensatory increment granted with effect from 01.01.2014 was cancelled vide No. G.12017/1/2011-FIN(PRU) dated 11.02.2014 and the excess drawal of pay if any with effect from 01.01.2017 to 31.12.2021 may be recovered. The petitioners came to learn that such a step was taken on account of the clarification issued on the Office Memorandum dated 09.01.2014 by another Office Memorandum dated 11.02.2014, which was quoted in their Pay Slip issued on 21.02.2022. Aggrieved with the same, the Mizoram College Teachers Association (Teachers Association) through its President and General Secretary submitted a representation to the Chief Controller of Accounts with a prayer to revoke the cancellation of grant of one (1) increment to compensate of the loss of one (1) increment. Similar representation was also submitted to the Principal Secretary to the Govt. of Mizoram, Finance Department on 02.06.2022 by the Teachers Association. In response to the representation, a number of correspondence took place between the Finance Department and the Chief Controller of Accounts and ultimately, vide I.D dated 21.07.2022, the Under Secretary to the Govt. of Mizoram, Finance Department (PRU) informed the Under

Secretary of the Higher & Technical Education Department the outcome of the consideration of the representation of the Teachers Association. Communication dated 21.07.2022 is abstracted hereunder for ready perusal:-

“Subject: Revocation cancellation of granting one increment to compensate the loss of one increment.

Under Secretary, H&TE is requested to inform Mizoram College of Teachers Association regarding revocation of cancellation of granting one increment to compensate the loss of one increment as –

- (1) There are a few situations in which excess drawal of pay & allowances can be exempted from recoveries. The present case is not included among such situation.*
- (2) Amounts to be recovered will not be high if rectifications and recovery were done early.*
- (3) Point No (1) of OM. Dated 11.2.2014 is reasonable and valid for pay fixation matters and hence the question of revoking cannot arise.*
- (4) Recoveries in installments may be allowed. Their pay should be rectified at the earliest to avoid further pay problems.”*

[5.] The above Communication was made to the President of the Teachers Association by the Under Secretary of the Higher & Technical Education Department on 04.08.2022. Aggrieved with the same, the petitioners who are members of the Teachers Association are before this Court.

[6.] Mr. A.R. Malhotra, learned counsel for the petitioners submits that Revision

of Pay Rules of 2010 was notified on 06.08.2010 by the Governor of Mizoram in exercise of the powers conferred by the proviso to Article 309 read with Article 162 of the Constitution of India wherein at Clause 10, an uniform date of annual increment has been provided. However, since the same did not cover the case of those employees whose increments fell due between February to June, 2006, the Office Memorandum dated 09.01.2014 relaxing Rule 10 of ROP Rules of 2010 was issued by the State Government in the Finance Department by invoking the powers conferred by Rule 22 of the same Rules granting one (1) increment to those employees whose date of increment fell between February to June, 2006. This was done similar to what was done by the Govt. of India in the Ministry of Finance, Department of Expenditure vide their Office Memorandum dated 19.03.2012 in respect of Central Government employees. However, the Govt. of Mizoram in the Finance Department subsequently issued the impugned Office Memorandum dated 11.02.2014 in clear violation of the Govt. of Mizoram (Transaction of Business) Rules, 2014 (Transaction of Business Rules) more particularly, Rule, 8, 10 & 11. The learned counsel submits that as per Rule 8, the Minister in-charge of a Department is responsible for the disposal of Business pertaining to the Department and the Secretary of the Department is required to assist and carry out the instructions of the Minister-in-charge in this regard. Rule 10 provides that an order or instrument made or executed by or on behalf of the Government of Mizoram shall be expressed to be made or executed in the name of the Governor

of Mizoram. Further, as per Rule 11, every order or instrument of the Government of the State shall be expressed to be made in the name of the Governor and shall be signed either by an Under Secretary or anyone above or by such other officer as may be specially empowered in that behalf and such signature shall be deemed to be proper authentication of such order or instrument.

[7.] The learned counsel submits that in the instant case, the impugned clarification issued vide Office Memorandum dated 11.02.2014 has not been issued in the name of the Governor of the State and also, without the approval of the Minister of the Department concerned as admitted by the respondents themselves in their counter affidavit. As such, the same is not sustainable in law and should be set aside. In this connection, the learned counsel relies upon the following authorities:-

(1) K.S.B. Ali -Vs- State of Andhra Pradesh & Ors. (2018) 11 SCC 277 and

(2) State of Uttaranchal & Anr. -Vs- Sunil Kumar Vaish & Ors.(2011) 8 SCC 670.

[8.] Mr. A.R. Malhotra, learned counsel by referring to the affidavit-in-opposition filed by the State respondents, more particularly paragraph No. 4 submits that the State respondents have tried to explain the action taken by them through the impugned Office Memorandum dated 11.02.2014 in the manner stated therein. He submits that when the impugned Office Memorandum itself does not provide the

reason and justification for taking such a step, the same cannot be done at a later stage through an affidavit. He submits that it settled position in law that one cannot improve a case by way of an affidavit. In this connection, the learned counsel relies upon the case of *Mohinder Singh Gill & Anr. -Vs- The Chief Election Commissioner, New Delhi & Ors. AIR 1978 (SC) 851*.

[9.] The learned counsel submits that according to the State respondents, they are seeking recovery of the excess drawal only with effect from 01.01.2017 and up to 31.12.2021 by applying the Office Memorandum issued by the Govt. of India in the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel & Training dated 02.03.2016 in terms of the decision of the Apex Court in *State of Punjab -Vs- Rafiq Masih (White Washer) (2015) 4 SCC 334*. The learned counsel submits that however the judgment of the Apex Court has been wrongly interpreted by the State respondents by seeking to deduct the excess drawal of pay only with effect from 01.01.2017. The learned counsel submits that it is clear from the judgment of the Apex Court in *Rafiq Masih* (supra) that recoveries by the employers from the employees concerned will not be permissible in law when the excess payment has been made for a period of five (5) years before the order of recovery is issued. In the present case, there is no dispute to the fact that the excess payment according to the State respondents was made from 01.01.2014 and now they are trying to recover the excess payment as reflected in the Pay Slip

dated 21.02.2022. The decision of the Apex Court in *Rafiq Masih* (supra) has also been referred to and adopted in the case of *Thomas Daniel -Vs- State of Kerala & Ors.* 2022 SCC OnLine SC 536 and the learned counsel therefore submits that there cannot be any dispute regarding impermissibility of the recovery of the excess payment from the petitioners by the State respondents. He submits that in getting the benefits of the increment, the petitioners have no role and that they are not responsible for the same in any manner. Therefore, no recovery will be permissible in view of the law laid down by the Apex Court. The learned counsel thus submits that the impugned Office Memorandum dated 11.02.2014 having not been issued in accordance with law, the same should be set aside and no recovery should be made from the pay of the petitioners for the alleged wrong fixation of their pay.

[10.] The learned counsel also submits that the petitioners have sought for information from the respondents authority by filing an RTI application as to what extent the impugned Office Memorandum has covered the Government employees and also from whom such recovery has been made so far. In response to the query made, the petitioners have been informed that one (1) increment to compensate the loss of one (1) increment has been given to 522 Government employees in 43 different Government Departments including the Higher & Technical Education Department and that out of the 522 employees, recovery has been directed to be made only from 86 employees and from the Higher & Technical Education

Department by cancelling one (1) increment to compensate the loss of one (1) increment given to them earlier. The learned counsel therefore submits that no justification has been offered by the State respondents as to why the petitioners have been singled out from getting the benefit of the said increment and therefore, even for this reason, the impugned cancellation of the benefit already given, the recovery process initiated as well as the clarification made through the impugned Office Memorandum should be interfered with by this Court.

[11.] Mrs. H. Lalmalsawmi, learned Govt. Advocate on the other hand by referring to the affidavit-in-opposition filed by the State respondents submits that one time increment to compensate the loss of increment in the pre-revised pay was granted in respect of Central Government employees on 01.01.2006 and it was adopted by the Govt. of Mizoram to be effective from 01.01.2014. In the 6th Pay, there was wide gap between Pay Band – 4 and Pay Band – 3 and therefore, the clarification was issued to the effect that the compensatory increment should be given only if the pay in the promotion post is higher than the minimum pay scale/pay band after granting of compensatory increment. She submits that since the gap between Pay Band – 3 and Pay Band – 4 is very wide, there could be instance where promotion pay in respect of employees promoted from Pay Band – 3 to Pay Band – 4 was fixed at the minimum pay of Pay Band – 4 despite grant of compensatory increment. Therefore, a clarification was in the order to clarify that

compensatory increment will not be applicable if promotion pay was fixed at minimum of next higher Pay Scale since there was no loss to compensate in such excess. The learned Govt. Advocate submits that recovery have been made in the past in other cases and in order to maintain parity, recovery is required to be made in the instant case as well and in fact, the same has been done after due consideration and by granting certain concession. In other words, the learned Govt. Advocate submits that only 62% approximately has been sought to be recovered while about 38% of the excess payment has been ignored.

[12.] The learned Govt. Advocate further submits that the Office Memorandum dated 11.02.2014 is only in the nature of clarification and it does not change the policy of the State Government so as to invite invoking of the provisions provided under Clause 8, 10 & 11 of Transaction of Business Rules. She submits that since there is no change in the policy of the Government, the same can be very well considered and disposed of at the level of the Secretary of the Department. She also submits that there is a limited scope for judicial review in matters relating to finance or pay scales of Government employees. She submits that unless there is a clear error which is apparent on the face of it, the High Court in exercise of its powers under Article 226 of the Constitution may not interfere in the decision of the authorities concerned who are otherwise supposed to be the expert in this field. In this connection, the learned counsel relies upon the case of *Union of India*

-Vs- Indian Navy Civilian Design Officers Association & Anr. 2023 SCC OnLine SC 173.

[13.] The learned Govt. Advocate lastly submits that under Rule 3, Ninth Schedule of the Govt. of Mizoram (Allocation of Business) Rules, 2014, the Finance Department has powers to issue clarification on pay matters to supplement the principal orders. Therefore, the learned Govt. Advocate submits that the Office Memorandum dated 11.02.2014 is sustainable and may not be interfered with by this Court and that the writ petition should be dismissed.

[14.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. From the projection made by the parties, the issue to be decided is as to whether the impugned recovery sought from the petitioners for excess drawal of pay with effect from 01.01.2017 to 31.12.2021 is authorized, justified and permissible in law and whether the impugned Office Memorandum dated 11.02.2014 is sustainable in law.

[15.] Following the Notification dated 29.08.2008 issued by the Govt. of India in the Ministry of Finance, Department of Expenditure notifying the Revised Pay Rules of 2008, the Governor of Mizoram in exercise of the powers conferred by proviso to Article 309 read with Section 162 of the Constitution of India vide Notification dated 06.08.2010 notified the ROP Rules of 2010 providing that the same shall be deemed to have come into force on 01.01.2006. The pay under the Rules shall be

notionally fixed with effect from 01.01.2006 and actual monetary benefit shall be paid with effect from 01.01.2009 only. The arrear of pay and allowance for the period from 01.01.2009 to 31.07.2010 shall be impounded into the GPF accounts of the employees belonging to Group 'A', 'B' and 'C' categories. Clause 10 of the ROP Rules of 2010 provides that uniform date of annual increment namely 1st July of every year. Employees completing six (6) months and above in the revised pay structure as on 1st July will be eligible to be granted the increment. In order to compensate the loss of one (1) increment due to introduction of common date of increment for all employees in accordance with the provision of Rule 10 of the Revision of Pay Rules, 2008, the Govt. of India vide Office Memorandum dated 19.03.2012 granted one (1) increment as on 01.01.2006 in the pre-revised Pay Scale to those Central Government employees who were due to get their annual increment between February to June, 2006. Similarly, the Govt. of Mizoram in the Finance Department vide Office Memorandum dated 09.01.2014 granted similar benefit of one (1) increment for those who were to get their annual increment between February to June, 2006 but the actual benefit of increment will be from 01.01.2014 and the next date of increment will be on 01.07.2014. Based on the Office Memorandum dated 09.01.2014, the petitioners were granted one (1) increment to compensate the loss of one (1) increment due to introduction of common date of increment as per the ROP Rules of 2010.

[16.] While the petitioners were enjoying the increments computed from time to time, the Office of the Chief Controller of Accounts while issuing Pay Slip to the petitioners on 21.02.2022, cancelled the compensatory increment granted with effect from 01.01.2014 in terms of the impugned Office Memorandum dated 11.02.2014 and directed that the excess drawal of pay with effect from 01.01.2017 to 31.12.2021 should be recovered.

[17.] From a perusal of the impugned Office Memorandum dated 11.02.2014, it is seen that the same is a clarification in respect of the grant of one (1) increment to compensate the loss of one (1) increment due to introduction of same date of increment for all employees as per Rule 10 of the ROP Rules of 2010. Although the same is said to be a clarification but it has the effect of depriving the employee concerned of the increment if the employee concerned on being promoted from Pay Band - 3 to Pay Band - 4 post does not get his/her pay equal to the minimum of pay in Pay Band - 4 even if the compensatory increment is granted. Therefore, having regard to the effect it has, it cannot be presumed to be a mere clarificatory Office Memorandum.

[18.] Although it is the claim of the State respondents that the subject of pay matters is allocated to the Finance Department under the Govt. of Mizoram (Allocation of Business) Rules, 2014 and therefore, the Finance Department has the power to issue clarifications on pay matters to supplement principal orders but the

fact remains that as per Rule 8 of the Transaction of Business Rules, the Minister in-charge of the Department is responsible for disposal of business pertaining to his Department and the Secretary of the Department should assist and carry out the instructions of the Minister in-charge in this regard. The State respondents in their affidavit-in-opposition at paragraph No. 11 have admitted that the approval of the concerned Minister was not obtained prior to issuance of the Office Memorandum dated 11.02.2014 since the same is merely a clarification and not a policy change and deviation from the provision of Office Memorandum dated 09.01.2014. However, as already stated earlier, the impugned Office Memorandum dated 11.02.2014 cannot be understood to be only a clarificatory Office Memorandum since it lays down the pre-condition in order to be entitled to compensatory increment.

[19.] Further, Rule 10 of the Transaction of Business Rules provides that order or instructions made or executed by on or behalf of the Govt. of Mizoram shall be expressed to be made or executed in the name of the Governor of Mizoram. The same is not the case in respect of the impugned Office Memorandum dated 11.02.2014. The State Government may have their justification or the rationale behind issuing the impugned Office Memorandum dated 11.02.2014 but the same has to be done in conformity with the relevant rules and guidelines in this regard. As already stated, if the Office Memorandum dated 11.02.2014 is unauthorized,

what falls out from the said Office Memorandum cannot be sustained in law.

[20.] It is a settled principle of law that Business Rules framed under the provision of Article 166(3) of the Constitution are mandatory in nature and should be strictly adhered to. Mere writing something on the file does not amount to an order and does not have any force in law. Rule 10 of the Transaction of Business Rules as already noted earlier also provides that the order or instrument has to be made in the name of the Governor. Therefore, unless an order is expressed in the manner provided by the Rules, the same cannot be treated as an order on behalf of the Government. This is what the Supreme Court held in the case of *K.S.B. Ali* (supra) and *Sunil Kumar Vaish & Ors.* (supra). Accordingly, the impugned Office Memorandum dated 11.02.2014 is found to be unsustainable in law and the same is set aside.

[21.] In respect of the issue on recovery sought to be made from the petitioners, the law in this regard is also well settled. The Apex Court in *Rafiq Masih* (supra) laid down situations under which recoveries by the employers will not be permissible. One such situation is recovery from an employee, when the excess payment has been made for a period in excess of five (5) years before the order of recovery is issued. Admittedly, in the instant case, the petitioners have been given compensatory increment with effect from 01.01.2014 and the same has been sought to be recovered through the additional instruction reflected in their

Pay Slip dated 21.02.2022 and therefore, in the absence of any role on the part of the petitioners for getting the compensatory increment, the benefit already given to them since 01.01.2014 cannot be recovered. Accordingly, the additional instruction seeking recovery of excess drawal of pay from the petitioners as contained in their respective Pay Slips and the impugned Communication dated 19.07.2022 stands interfered with. The respondents are directed not to recover any excess drawal of pay from the petitioners.

[22.] Notwithstanding the setting aside of the impugned Office Memorandum dated 11.02.2014, since this Court has not come to a finding on merit with regard to the reasoning and rationale behind the decision taken not to grant the compensatory benefit to those whose pay is not equivalent to the minimum pay in the promotion post of Pay Band - 4 despite being given compensatory increment and since the impugned Office Memorandum dated 11.02.2014 is only found to be unsustainable for having failed to comply with the mandatory legal requirements, the State respondents may take a fresh decision in the matter as permissible in law and not otherwise.

[23.] With the above observations and directions, the writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant