IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

OP.No. 19706 of 2001 (U)

PETITIONERS:
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1. **ANNIE MARIA, ASSISTANT**
   KERALA AGRO MACHINERY CORPORATION [KAMCO]
   ATHANI-683 585, ERNAKULAM DISTRICT.

2. **K.P. JOSEPH, ASSISTANT**
   KERALA AGRO MACHINERY CORPORATION [KAMCO]
   ATHANI-683 585, ERNAKULAM DISTRICT.

3. **M. MAJEEDKUTTY, PAINTER**
   KERALA AGRO MACHINERY CORPORATION [KAMCO]
   ATHANI-683 585, ERNAKULAM DISTRICT.

4. **P.K. SUGATHAN, PAINTER**
   KERALA AGRO MACHINERY CORPORATION [KAMCO]
   ATHANI-683 585, ERNAKULAM DISTRICT.

BY ADVS.SRI.K.A.JALEEL
SRI.C.ANILKUMAR (KALLESSERIL)

RESPONDENTS:
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1. **THE MANAGING DIRECTOR**
   KERALA AGRO MACHINERY CORPORATION [KAMCO]
   ATHANI-683 585, ERNAKULAM DISTRICT.

2. **THE BOARD OF DIRECTORS**
   KERALA AGRO MACHINERY CORPORATION [KAMCO]
   ATHANI-683 585, ERNAKULAM DISTRICT
   REPRESENTED BY MANAGING DIRECTOR.

3. **THE SECRETARY TO GOVERNMENT**
   AGRICULTURAL (PU) DEPARTMENT
   GOVERNMENT SECRETARIAT
   THIRUVANANTHAPURAM.

BY ADV. SRI.E.K.NANDAKUMAR
BY GOVERNMENT PLEADER SMT. SMITHA VINOD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 19706 of 2001 (U)

APPENDIX

PETITIONERS' EXHIBITS :-

EXT.P1	**-**	**COPY OF ORDER ISSUED TO THE PETITIONER NO.1 BY THE MANAGER PERSONNEL KAMCO DATED 22.06.2001.**
EXT.P2	**-**	**COPY OF ORDER ISSUED TO THE 2ND PETITIONER BY THE MANAGER PERSONNEL KAMCO DATED 22.06.2001.**
EXT.P3	**-**	**COPY OF ORDER ISSUED TO THE 3RD PETITIONER BY THE MANAGER PERSONNEL KAMCO DATED 22.06.2001.**
EXT.P4	**-**	**COPY OF ORDER ISSUED TO THE 4TH PETITIONER BY THE MANAGER PERSONNEL KAMCO DATED 22.06.2001.**

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

O.P. No.19706 of 2001-U

Dated this the 17th day of December, 2015.

JUDGMENT

The petitioners were workmen in the respondent Corporation. The issue raised in the O.P. is with respect to a pay anomaly, which was rectified by the respondent, but however, later withdrawn. The rectification was made on the basis of a representation made by the petitioners on the ground that they were drawing lesser pay than their juniors. The respondents, on consideration of the representation, stepped up the pay of the petitioners to that of their juniors, pointed out by the petitioners.

2. Later on, an objection was raised by the Accountant General, Kerala, specifically indicating that such step-up of pay could be given only to persons in the same cadre. The respondent Company hence issued Exts.P1 to P4 orders against the petitioners, reducing their pay, cancelling the rectification and also directing recovery of the excess amounts drawn on step-up.

3. The respondent Company has filed a Counter Affidavit, in which it has been specifically stated that the petitioners herein pointed out certain anomalies and relying on Rule 28A of Part-I KSR, the same was granted. Later on, being cautioned by the Accountant General, it was revealed that the alleged juniors did not belong to the same cadre as the

petitioners. It was in such circumstance, that the rectification granted was found to be a mistake and the same cancelled.

4. It is to be noticed that a stepping up of pay as per Rule 28A of Part-I KSR is regulated by Ruling No.1(a), which specifically provides that such stepping up of pay can be allowed only when the junior and senior officers belong to the same cadre and the post they occupy should be identical. In such circumstance, if the juniors, whom the petitioners alleged to have been drawing more pay, are not in the same cadre and there is no possibility of an equation of posts, then necessarily no stepping up could have been granted. A mistake thus occurred could be cancelled by the respondent Corporation. However, the fact remains that the petitioners were not issued with any notice

before such cancellation was made.

5. The learned counsel for the petitioners contends that the petitioners are now retired and the decision of the Hon'ble Supreme Court in ***State of Punjab v. Rafiq Masih [2015 (1) KLT 429 (SC)]*** would squarely apply, in so far as the recovery is considered. This Court is unable to countenance such contention, since admittedly the retirement of the petitioners were some time in the year 2010, long after the writ petition was filed. The rectification of alleged anomaly was on 21.04.1999 and the same was sought to be rectified in 2001. The petitioners, at the time of filing of the writ petition, obtained a stay of recovery in CMP No.31906 of 2001. Subsequently in CMP No.35875 of 2001, the reduction in pay, by reason of cancellation of step-up was also stayed. Hence,

the petitioners have been drawing higher pay all through their service till their retirement, merely because of the interim order in the writ petition and they cannot now submit that the writ petition is rendered infructuous by reason of the petitioners having retired

6. ***Rafiq Masih (supra)*** took into consideration five situations, which are as under:

> *(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."*

7. None of these conditions apply. The petitioners do not belong to Class III or IV and the wrong payment was made only for about two years, and there could be no iniquity harshness or arbitrariness found. The claim of the petitioners also was not on account of additional duties, but a mere step-up. The retirement was long after the cancellation and cannot at all effect the recovery of excess pay, which they enjoyed by virtue only of the interim order. Apposite would be reference to ***(2008) 17 SCC 73, Abhimanyoo Ram Vs State Of***

U.P. A benefit derived of an interim order cannot ennure to the benefit of a writ petitioner if eventually the writ petition itself is rejected.

8. It is to be noticed herein, that within two years of the erroneous rectification made (21-04-1999), the respondent attempted to correct it by canceling it (21-03-2001). The petitioners herein challenged the same before this Court and obtained an interim order of stay of recovery and one of stay of reduction of pay. They took the risk of drawing the higher pay, by specifically asking for the same, which can only be subject to the result of the writ petition.

9. In such circumstance, though no recovery could be made for the amounts paid prior to Exts.P1 to P4, since the petitioners were not

at fault; the same would not apply for the future period. The petitioners could be issued with notice and after hearing them, looking at the provisions of Rule 28A of Part-I KSR, the Company could also take appropriate action for refund of the excess pay drawn, when the writ petition itself was pending here, if the rectification is found to be actually erroneous.

With the aforesaid observation, the writ petition would stand disposed of. No Costs.

Sd/-

K. VINOD CHANDRAN,
JUDGE.

//True Copy//

P.A. to Judge.

sp/18/12/15