

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 15234 of 2009 (Y)

PETITIONER:

**K.ASOKAN NAMBIAR, S/O.UNNIKURUP,
'VANDANAM', POYILIL PARAMBU, POST MAKKADA,
VIA KAKKODI, KOZHIKODE-673617.**

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S):

- 1. DIRECTOR,
STATE INSTITUTE OF LANGUAGES,
NALANDA, NANTHANCOD, THIRUVANANTHAPURAM.**
- 2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
CULTURAL DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**

**R1 BY ADV. SRI.JAWAHAR JOSE, SC
ADV. SRI.P.K.VIJAYAMOHANAN,SC
R2 BY SENIOR GOVT. PLEADER SRI.SOJAN JAMES**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

WP(C).No. 15234 of 2009 (Y)

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 : A COPY OF THE RELIEVING ORDER NO.E1/196/2000/SIL
DATED 30.8.2005 ISSUED TO THE PETITIONER BY THE
1ST RESPONDENT.
- EXHIBIT P2 : A COPY OF THE ORDER NO.E1/196/2000/SIL DATED 23.11.2005
ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT.
- EXHIBIT P3 : A COPY OF THE ORDER NO.B/1597/2007/SIL DATED 5.1.2009
ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT.
- EXHIBIT P4 : A COPY OF THE REPRESENTATION DATED 17.1.2009 SUBMITTED BY
THE PETITIONER.
- EXHIBIT P5 : A COPY OF THE ACKNOWLEDGMENT SHOWING THE RECEIPT OF
EXT. P4 BY THE 1ST RESPONDENT.
- EXHIBIT P6 : A COPY OF THE REPRESENTATION DATED 25.2.2009 SUBMITTED
BY THE PETITIONER TO THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

C.K. ABDUL REHIM, J.

W.P.(c) No. 15234 OF 2009-Y

DATED THIS THE 5th DAY OF JANUARY, 2015.

J U D G M E N T

The petitioner retired from service of the 1st respondent as 'clerical attendant (higher grade)' with effect from 31-08-2005. Despite several demands the terminal benefits due to the petitioner was not settled and paid till the year 2009. During January 2009 the petitioner was issued with Ext.P3 notice fixing liability upon him to the tune of Rs.83,464/-, being excess salary and leave surrender amount paid in between the period from 16-12-1981 to 31-12-2004. The petitioner was informed that a total amount of Rs.3,13,825/- including interest will be deducted from the pensionary benefits due to the petitioner. The said notice is challenged in this writ petition. The petitioner inter alia seeks direction to the 1st respondent to disburse the entire terminal benefits due to him.

2. While admitting this writ petition an interim order was issued staying recovery of the amounts covered under

Ext.P3. It is submitted that on the basis of a consent given by the petitioner, the 1st respondent had disbursed the entire benefits due to him after deducting a sum of Rs.68,326/-, by granting waiver of interest demanded in Ext.P3.

3. The petitioner is raising contention that he is also entitled to get back the amount of Rs.68,326/- which was deducted from the terminal benefits, contending that the excess payment of salary and other benefits was made not because of any incorrect information furnished by him and that the mistake had occurred solely on the part of the 1st respondent. Learned counsel appearing for the petitioner placed heavy reliance on a decision of the hon'ble Supreme Court in State of **Punjab and others V. Rafiq Masih (CDJ 2014 SC 1054)**. While deciding a batch of civil appeals, the hon'ble apex Court had evaluated various legal precedents on the issue in question. It was observed that the respondent employees in all those cases are not guilty of furnishing any incorrect information which had led to the

mistake of making higher payment. In other words, it was found that the payment of higher amounts was not on account of any fraud or misrepresentation committed by the employees. The hon'ble Supreme Court observed that, any participation of the employees in the committal of such mistake by the employer which resulted in extending undue monetary benefits, is totally ruled out. In such circumstances the Court had evaluated as to whether recovery of such amounts can be permitted. After postulating all situations of hardships which would governing the employees on the issue of recovery, the hon'ble Supreme court had summarised certain situations wherein recovery by the employees can be made permissible. The relevant extract of the decision, contained in the operative portion of the judgment, is quoted below.

“12. 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 employees belonging to Class-III and 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.

4. Learned counsel had pointed out that the recovery cannot be permitted because factual matrix of the case at hand will fall within the category (i) to (iii) of the above said judgment. Firstly it is pointed out that the petitioner was a Class-III employee and the recovery was sought to be effected after a period of 4 years from the date of superannuation. It is further contended that the excess payment sought to be recovered pertains to a period in excess of 5 years, as stipulated under Clause (iii). However, learned Standing Counsel for the 1st respondent disputed that the petitioner is a Class-III employee under the 1st respondent. But the factual situation with respect to Clause (ii) and (iii) could not be disputed. Since it is noticed that the recovery sought to be effected pertains to a period long prior to retirement and that the liability was not fixed within any reasonable period after the retirement, this court is of the considered opinion that it is a fit case where the guidelines stipulated by the hon'ble Supreme Court in the judgment cited above will apply. Since respondents have no

case that the excess payment have effected due to any misrepresentation or fraud committed by the petitioner and since the payments pertains to a long period of more than 5 years, and since the liability was fixed only after the period fixed stipulated in the judgment cited above, this court is inclined to order that the recovery is not sustainable.

5. Under the above mentioned circumstances this writ petition is allowed and Ext.P3 is hereby quashed. The 1st respondent is directed to make payment of the deducted amount of Rs.68,326/-, without payment of any interest to the petitioner at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge