*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on August 3, 2015
Judgment delivered on August 07, 2015

\+   **W.P.(C) 4127/2014 & CM Nos. 8299/2014, 16813/2014**

BHANWAR SINGH ..... Petitioner
Through: Mr. Amit Trikhe, Adv.

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Ms. Tamali Wad, Adv. with Mr. Vaibhav Sharma, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. In this writ petition filed by the petitioner, the challenge is made to the Pension Payment Order dated June 16, 2014 issued by the respondent No. 2-National School of Drama (School, in short), whereby according to the petitioner, the pension has been reduced and being a case of a loss of civil consequences, is not sustainable in the eyes of law, illegal and arbitrary. Consequential relief thereof has also been sought.

2. The brief facts of the case are that, the petitioner while working as the Registrar of the respondent No. 2-School retired on July 31, 2013 on attaining the age of superannuation, when except GPF amounts, no retirement dues were paid to him. The reasons for non-payment of

retiremental dues were primarily because of audit objections raised in his case, which were as under:

(i) The regular grant of benefit under ACP scheme .

(ii) The regular appointment of the petitioner as Registrar in NSD.

(iii) Wrong fixation and drawl of pay by the petitioner; and

(iv) Grant of advance increment to the petitioner raised by the Office of Directorate General of Audit (Central Revenue Expenditure).

3. The respondent No.2-School had contested the audit objections. The Directorate General of Audit (Central Revenue Expenditure) did not agree with the explanation and insisted upon the compliance of the audit objections. In fact, a meeting of the respondent No. 1 was held on January 25, 2013, which was followed by another meeting held on July 30, 2013, one day before the date of superannuation of the petitioner, and pursuant thereto, an undertaking was given by the petitioner on the following terms:

> *"I, Bhanwar Singh, Registrar, National School of Drama, New Delhi, resident of Flat No. 20A MIG, Gyankhand-IV, Indrapuram, Ghaziabad, UP-201010, hereby undertake as under:*

In the audit report's paras for the financial year 2009-2012 some audit objections have been identified to be made from certain officers of the School including me.

I hereby give an unconditional undertaking that in the event of a final decision for recoveries I shall be liable to refund the amount which would be worked out by the School in accordance with the Rules. I further give an undertaking that in the event of any default on my part to make the payment, the School would have the right to with-hold my pension."

4. It is the case of the respondent that a Pension Payment Order was prepared on July 31, 2013 but the same was not issued, although, a stand has been taken by the petitioner enclosing along with the petition Pension Payment Order dated July 31, 2013 that the same was issued to him on the date of retirement.

5. Certain representations were made by the petitioner for release of pensionary benefits and highlighting the need of money for his treatment. In the month of August, 2013, sum of Rs. 9,57,000/- and Rs. 4,46,867/- were deposited in the bank account of the petitioner, after recovering an amount of Rs. 8,28,490/- from the pensionary benefits of the petitioner. On June 16, 2014, a revised Pension Payment Order was

prepared and issued to the petitioner.

6. The respondent No. 2 has given the reply highlighting the nature of objections raised by the audit and their disagreement on the explanation given by the respondent School, and insisting on compliance of the objections so raised. The respondent No.2 has also stated about recovery of Rs. 8,28,490/- effected from the leave encashment and commutation of pension, and payment of Rs. 9,57,372/- and Rs. 4,46,867/-. According to the respondent No.2, some amount was also claimed as interest against motor car advance.

7. The learned counsel for the petitioner would concede and apologise for the incorrect stand taken by the petitioner in the writ petition on the issuance of the Pension Payment Order dated July 31, 2013 to him. That apart, he would state that the respondents could not have recovered the amount without issuing the show cause notice to him. He would also state that the petitioner was in no way responsible for the benefits given to him, which were the subject matter of the audit objections. He would also state, the petitioner having retired, the recoveries could not have been effected. He would rely upon the judgments of the Supreme Court in the cases reported as ***AIR 2015 Supreme Court 696, State of Punjab and Others Vs. Rafiq Masih (White Washer) etc.*** and judgment in ***Civil Appeal No. 5262/2008,***

Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and Others, decided on April 17, 2014.

8. On the other hand, learned counsel appearing for the respondent No. 2 would submit that the petitioner has not come to the Court with clean hands and has made a false statement that the Pension Payment Order dated July 31, 2013 was issued to him. She states, it was only prepared by the office of the respondent but not issued to the petitioner. The petitioner being the Registrar of the School at the relevant time had taken advantage of his position to get a copy of the same, rely on it in the petition. She seeks the dismissal of the writ petition on this ground alone. That apart, she would state that there is no challenge to the merit of the audit objections raised by the Directorate General of Audit (C.R.Expenditure). She also states that the petitioner having given an undertaking cannot now seek recovery of the amount already deducted from the leave encashment/commutation of pension. According to her, the undertaking was very explicit wherein, the petitioner has stated that in the event of final decision for recoveries, the petitioner would be liable to refund the amount which would be worked out by the School in accordance with the Rules. She would also give the details of the payments made and the recoveries effected. Insofar as the plea of the petitioner that no show cause notice was given before effecting the

recoveries, she states that such an action was not required to be followed, moreso, when the petitioner, being the Registrar himself was corresponding with the Ministry on the objections raised by the Office of the Directorate General of Audit and in that regard, she has referred to page 297 of the paper book, which is a letter written by the petitioner to the Under Secretary of the respondent No. 1. That apart, it is her case, the very fact that the petitioner has himself given an undertaking, authorizing the recovery, no show cause notice was required to be given.

9. Having heard the learned counsel for the parties, there is no denial to the fact that the petitioner had given an undertaking, in the eventuality of final decision for recoveries, he is liable to refund the amount, which would be worked out by the School in accordance with the Rules. It is also conceded by the learned counsel for the petitioner that the petitioner has not challenged the merit of the audit objections. In other words, the petitioner justifies the objections. The question would only be, in view of the ratio of the judgment of the Supreme Court in the case of ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) etc. (supra)***, more specifically, in para 12, wherein the Supreme Court has held, recoveries by the employers, would be impermissible in law in the following situations:

> *" (i) XXX XXX XXX*

> *(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) XXX XXX XXX*
>
> *(v) XXX XXX XXX"*

In the case in hand, on a perusal of audit objections raised qua the petitioner, same relates to the years 1994, 2001, 2009 and 2010.

10. It is also not in dispute that the petitioner had retired on July 31, 2014 and the audit objections are in excess of five years before the recovery had actually been effected. The case of the petitioner falls in the eventuality at serial No. (ii) and (iii) above. No doubt, undertaking has been given by the petitioner, but, the same has to be considered from the perspective of law laid down by the Supreme Court in the case of ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) etc. (supra).***

11. In view of the above discussion, the writ petition is to be allowed to the limited extent that the Pension Payment Order dated June 16, 2014 is upheld, but, the recovery of the amount of Rs. 8,28,490/- is not justified and the same is liable to be refunded to the petitioner after adjusting the excess pension paid to the petitioner w.e.f. August, 2014. The petitioner would not be entitled to the interest on the recovered

amount. At the same time, this Court, cannot overlook the conduct of the petitioner in pursuing the writ petition, by making an incorrect/false statement with regard to Pension Payment Order dated July 31, 2013 having been issued to him and annexing therewith a photocopy of the same, as if he was in receipt of the same. It is also a settled law, that, if a person has not approached the Court with clean hands, the petition should be dismissed at the threshold, but, at the same time, this Court is conscious of the fact that the petitioner herein is a pensioner who has approached the Court against reduction in pension, and at the same time, being conscious of the conduct of the petitioner, this Court is of the view that the petitioner shall pay as costs Rs. 50,000/-, to be deposited with Delhi High Court Legal Services Committee, which would act as a deterrent to the litigants in general and petitioner in particular. The payment which has been directed to be repaid to the petitioner shall be released by the respondent No. 2-School only after the petitioner produces the evidence of having deposited the costs of Rs. 50,000/- with the Delhi High Court Legal Services Committee. A copy of this order be sent to the Secretary, Delhi High Court Legal Services Committee.

12. The writ petition is allowed to the aforesaid extent and is disposed of as such.

CM Nos. 8299/2014 (stay) & 16813/2014 (directions)

13. In view of the order passed in the writ petition, the present applications are also disposed of as infructuous.

(V.KAMESWAR RAO)
JUDGE

AUGUST 07, 2015
akb