

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2016

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.Nos. 28023 of 2013, 17870 of 2013,
32235 of 2013, 26682 of 2013,
26683 of 2013, 8998 of 2013,
29435 of 2013, 31555 of 2013
and 854 of 2014

and

M.P.Nos.1 and 2 of 2013 in W.P.No.28023 of 2013,
M.P.Nos.1 of 2013 & 1 of 2015 in W.P.No.17870 of 2013
M.P.No.1 of 2013 in W.P.No.32235 of 2013
M.P.Nos. 1 and 2 of 2013 in W.P.No.26683 of 2013
M.P.No.2 of 2013 in W.P.No.8998 of 2013
M.P.Nos.1 and 2 of 2013 in W.P.No.29435 of 2013
M.P.Nos.1 and 2 of 2013 in W.P.No.31555 of 2013
and
M.P.Nos.1 of 2014 & 1 of 2015 in W.P.No.854 of 2014

MRS.V.KARPAGAM	..PETITIONER in WP No.28023 of 2013
R.BANUMATHY	..PETITIONER in WP No.17870 of 2013
DR.P.KIRUBAKARAN	..PETITIONER in WP No.32235 of 2013
LAKSHMI BALASUBRAMANIAN	..PETITIONER in WP No.26682 of 2013
V.GEETHALAKSHMI	..PETITIONER in WP No.26683 of 2013
TMT.KARPAGAM BADRAGIRI	..PETITIONER in WP No.8998 of 2013
VIMALI THIAGARAJAN	..PETITIONER in WP No.29435 of 2013
V.ANNAMMAL MARY STELLA	..PETITIONER in WP No.31555 of 2013
M.T.YUVANESAN	..PETITIONER in WP No.854 of 2014

vs.

1 THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY
HOME DEPARTMENT FORT
ST. GEORGE CHENNAI-9.

2 THE DIRECTOR I/C.
FORENSIC SCIENCES DEPARTMENT
KAMARAJAR SALAI
MYLAPORE CHENNAI-4.

..RESPONDENTS 1&2 in WP No.28023 of 2013
26682, 26683, 8998, 29435, 31555/13, 854/14

1 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY HOME
DEPARTMENT(POLICE 18)
FORT ST. GEORGE
CHENNAI 600 009.

2 THE DIRECTOR
FORENSIC SCIENCE DEPT.30A
KAMARAJAR SALAI
MYLAPORE CHENNAI 600 004.

..Respondents 1&2 in
WP.32235 of 2013

3 THE PRINCIPAL ACCOUNTANT
GENERAL (A & E) PENSION
4 SECTION 361 ANNA SALAI
TEYNAMPET CHENNAI 600 018.

...3rd RESPONDENT in WP No.32235,26682,26683,
8998,29435,31555 of 2013 854/14

Writ Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Certiorarified Mandamus,

WP No.28023 of 2013: Calling for the records relating to the
order of the 2nd respondent made in No.A5/ 45635/08-1 dated
28.12.2012 and No.A5/38752/13-10 dated 6.9.2013 relating to
Paragraph-2 pertaining to re-fixation therein and to quash the
same and consequently direct the respondents to extend all
benefits as per the fixation made in Paragraph-1 of the
proceedings made in No.A5/ 38752/13-9 dated 6.9.2013 as had been
properly arrived

WP No.17870 of 2013: To call for the records pertaining to the
order passed by the second respondent herein in his Proceeding
No.A5/ 35712/13-10 dated 18.6.2013 in so far as ordering
recovery of overdrawn pay and allowances of Rs.2,52,684/- and
quash the same and consequently direct the respondents to re-pay
the recovered amount if any with interest

WP No.32235 of 2013:Calling for the records relating to the
order of the 2nd Respondent, made in the proceedings
A5/40494/13-7 and A5/40494/13-8 dt.22.10.2013 quash the same and
consequently direct the Respondent to extend all the benefits of
pay fixation and other benefits pursuant to the proceedings in
Na.Ka.No.A4/1613/98dt.21.10.98 for all purpose including pension
and pensionary benefits.

WP No.26682 of 2013: Calling for the records relating to the
order of the second respondent made in proceedings No.A5/
37385/13-9 dated 13.8.2013 and consequential order made in
No.A5/ 37385/13-10 dated 13.8.2013 quash the same and
consequently direct the respondents to extend all benefits of

pay fixation and other benefits pursuant to the proceedings in Na.Ka. No.A4/ 1613/98 dated 21.10.1998 for all purposes including pension and other pensionary benefits

WP No.26683 of 2013: Calling for the records relating to the order of the second respondent made in proceedings No.A5/38006/13-9 dated 3.9.2013 and consequential order made in No.A5/38006/13-10 dated 3.9.2013 quash the same and consequently direct the respondents to extend all benefits of pay fixation and other benefits pursuant to the proceedings in Na.Ka. No.A4/1613/98 dated 21.10.1998 for all purposes including pension and other pensionary benefits

WP No.8998 of 2013: Calling for records relating to the order of the 2nd respondent made in No.A5/45635/08-10 dated 28.12.2012 and No.A5/45635/08-9 dated 28.12.2012 relating to Paragraph-2 pertaining to re-fixation therein and to quash the same and consequently direct the respondents to extend all benefits as per the fixation made in Paragraph-1 of the proceedings made in No.A5/45635/08-9 dated 28.12.2012 as had been properly arrived at for the purpose of pension and other pensionary benefits as per applicable scale of pay in pay Band III

WP No.29435 of 2013: Calling for the records relating to the order of the second respondent made in Proceedings No.A5/ 39878/13-7 dated 11.10.2013 and consequential order made in Proceedings No.A5/ 39878/ 13-8 dated 11.10.2013, quash the same and consequently direct the respondents to extend all benefits of pay fixation and other benefits pursuant to the proceedings in Na.Ka. No.A4/ 1613/98 dated 21.10.1998 for all purposes including pension and other pensionary benefits

WP No.31555 of 2013: Calling for records relating to the order of the 2nd respondent made in Pro. No.A5/ 40495/13-1 dt 22.10.2013 and consequential order made in Pro. No. A5/40495/13-7 dt 22.10.2013 quash the same and consequently direct the respondents to extend all benefits of pay fixation and other benefits pursuant to the proceedings in Na. Ka. No.A4/16131/98 dt 11.11.1998 for all purposes including pension and other pensionary benefits

WP No.854 of 2014: Calling for records relating to the order of the 2nd respondent made in Pro. NO.A5/ 42882/13-1, dated 2.1.2014 and consequential order made in Pro. No.A5/42882/13-7, dated 2.1.2014 quash the same and consequently direct the respondents to extend all benefits of pay fixation and other benefits pursuant to the proceedings in Na. Ka. NO. A4/ 16131/98 dated 11.11.1998 for all purposes including pension and other pensionary benefits

For Petitioner

Mr.K.R.Ramesh Kumar : 28023 pf 2013
M/s. Ravi Shanmugam : 17870 of 2013
M/s. M.K. Sampath : 32235 of 2013
M/s.L. Chandrakumar : 26682 & 26683,
8998, 29435, 31555/13, & 854/14

For Respondents

Mr.K.V.Dhanapalan
Additional Government
Pleader : 28023, 28024, 17870/13,
32235/13, 26682,
26683, 8998, 29435, 31555/13,
& 854 of 2014

Mr.J. Sreevidya
AGGSC For R3 : 32235/13, 26682/13 & 26683/13
8998/13, 29435/13, 31555/13 & 854/14

COMMON ORDER

By consent, all these Writ Petitions are taken up together and disposed of at the stage of admission itself.

2. The petitioners were all initially appointed as Scientific Assistant Grade-II between the years 1979, 1981 and 1982. Their services were regularized during 1982, 1984 and 1985. On completion of ten years of service, they were granted Selection Grade scales of pay, by proceedings dated 1998 with retrospective effect on completion of ten years of regular services. Thereafter, by proceedings in 2012/2013, stating that the audit had objected that the revision of the Selection Grade was wrongly or mistakenly made, the respondents had sought to issue the consequential proceedings, thereby, revising and re-fixing the pay of the Selection Grade and consequentially, all those benefits, which were received by the petitioners during the relevant years were sought to be recovered from the petitioners. Hence, these Writ Petitions seeking to quash the impugned orders and for consequential direction.

3. The first and foremost ground of attack made by the learned counsel for the petitioners is that the impugned order of recovery and the consequential order of re-fixation in the scale of pay were without notice. He would further contend that mere audit objection cannot be a ground or a reason or cause to order recovery of the amount without even notice. In this connection, he would rely on the Division Bench judgment of the Hon'ble Apex Court reported in 2015(2) Supreme Court 151,

State of Punjab & Others etc. vs. Rafiq Masih (white Washer) etc., wherein, the Hon'ble Apex Court has categorically stated that no recovery could be made without notice. Even if payments have been mistakenly made by the employer to the employees, in excess of their entitlement; that cannot be recovered. In these cases on hand, out of 14 aggrieved Scientific Staffs, only 8 persons have come to Court, out of whom, 4 persons have already retired and 2 more persons are to retire in October, 2016. For the excess payment made earlier, the recovery was sought to be made by the proceedings in 2013. Therefore, relying on the above said decision, the learned counsel would contend that the recovery order as well as the consequential, order of re-fixation in the scale of pay, are wrong. In support of his contention, he would also rely on G.O.Ms.No.773, Finance (F.R.I), dated 13.08.1975, which states that the excess pay drawn due to the initial fixation under Fundamental Rule 22-B on temporary promotion/appointment, shall not be recovered in such cases or in cases where he is reverted to the lower post subsequently or if the person ceased to hold the higher post due to retirement or for any other reason.

4. The learned Additional Government Pleader, on the basis of the counter filed by the respondents, would contend that all these employees were very well aware of the sequence of their appointments as well as the consequential promotion. Infact, as a sample case, the learned Additional Government Pleader would contend that the petitioner in W.P.No.854 of 2014 had joined Government service as Scientific Assistant Grade-II, Forensic Sciences Department, on 16.08.1982 and initially, he was given promotion as Scientific Assistant Grade-I on 03.09.1990 and reverted as Scientific Assistant Grade-II on 15.07.1991 and again, he was promoted as Scientific Assistant Grade-I on 28.06.1995 and continued to serve in the same post till he was promoted as Scientific Officer on 29.04.2010 and subsequently, as Assistant Director on 22.05.2013. As per the proceedings of the Director, Forensic Science Department, dated 11.11.1998, the services of the petitioner in the said Writ Petition in the post of Scientific Assistant Grade-I was initially regularised w.e.f. 09.03.1987, based on the revised seniority list issued by the then Director in proceedings, dated 23.06.1995. Based on the above said regularisation order dated 11.11.1998, in which, his date of regularisation was fixed on 09.03.1987, he was moved to Selection Grade in the cadre of Scientific Assistant Grade-I on 09.03.1997 and consequently his Selection Grade pay was revised w.e.f. 09.03.1997 vide proceedings dated 20.11.1998. He would further add that during the year 1999, some of the Scientific Assistant Grade-I, aggrieved by the revised seniority list issued by the then Director in proceedings dated 23.06.1995 had filed O.A.No.443 of 1999 before the Tamil Nadu Administrative Tribunal. The said seniority list issued on 23.06.1995 was quashed by the Tamil Nadu Administrative Tribunal in its common

order dated 09.12.2003 in O.A.No.443 of 1999. Thereafter, as per the direction of the Tribunal, another revised seniority list was issued on 25.10.2006. Individuals aggrieved by the order of the Tamil Nadu Administrative Tribunal filed W.P.No.12751 of 2004 before this Court and obtained stay of the order dated 09.12.2003. Subsequently, the said Writ Petition was dismissed by the Division Bench of this Court by common order dated 28.01.2009, thereby, upholding the order of the Tribunal. However, the Tribunal declined to interfere with the revised seniority list. The learned Additional Government Pleader would further bring to the notice of this Court that though, the petitioners have been paid mistakenly in excess of their entitlement, an audit objection was made only on 09.09.2008, in which, it has been indicated that the regularisation of the services of 14 Scientific Staff (including the petitioners herein) in the post of Scientific Assistant Grade-I is much before their initial date of promotion as Scientific Assistant Grade-I and it is not in order. The recovery order has been passed not only by taking into account the Audit Objection, but also taking into account of the order of the Tamil Nadu Administrative Tribunal in O.A.No.443 of 1999 & others, dated 09.12.2003 and order of the Division Bench of this Court in W.P.No. 12751 of 2004, dated 28.01.2009. Accordingly, order was also issued to recover the excess pay drawn by them for the period in which they were not entitled to draw higher pay than what is eligible to them. Hence, he would pray for the dismissal of these Writ Petitions.

5. Heard both sides. I have considered the rival contentions.

6. It is seen that the petitioners were all initially appointed as Scientific Assistant Grade-II between the years 1979, 1981 and 1982. Their services were regularized during 1982, 1984 and 1985. On completion of ten years of service, they were granted Selection Grade scales of pay, by proceedings dated 1998 with retrospective effect on completion of ten years of regular services. Thereafter, by proceedings in 2012/2013, stating that the audit had objected that the revision of the Selection Grade was made wrongly or mistakenly, the respondents had sought to issue the consequential proceedings, thereby, revising and re-fixing the pay of the Selection Grade and consequentially, all those benefits, which were received by the petitioners during the relevant years were sought to be recovered from the petitioners. During the year 1999, some of the Scientific Assistant Grade-I, aggrieved by the revised seniority list issued by the then Director in proceedings dated 23.06.1995 had filed O.A.No.443 of 1999 before the Tamil Nadu Administrative Tribunal. The said seniority list issued on 23.06.1995 was quashed by the Tamil Nadu Administrative Tribunal in its common order dated 09.12.2003 in O.A.No.443 of 1999.

Thereafter, as per the direction of the Tribunal, another revised seniority list was issued on 25.10.2006. Individuals aggrieved by the order of the Tamil Nadu Administrative Tribunal filed W.P.No.12751 of 2004 before this Court and obtained stay of the order dated 09.12.2003. Subsequently, the said Writ Petition was dismissed by the Division Bench of this Court by common order dated 28.01.2009, thereby, upholding the order of the Tribunal. However, the Tribunal declined to interfere with the revised seniority list. But, that is not under dispute or challenge in these Writ Petitions. What is challenged by the petitioners is that whether recovery could be made in respect of the excess payment made to a Government Servant mistakenly or when there is no representation on misrepresentation, without notice. This question has been very well answered by the Hon'ble Apex Court, on many occasions and the latest one being reported in 2015 (2) Supreme Court 151, State of Punjab & Others vs. Rafiq Masih (White Washer). The subject matter of the case before the Hon'ble Apex Court is that, when the employer had made payments mistakenly to the employees, in excess of their entitlement, when there is no representation on misrepresentation, whether recovery could be effected. In the said judgment, the Hon'ble Apex Court has elaborately dealt with the issue and in paragraph Nos.4, 5, 11 to 13 have held as follows:-

"4. The issue that we have been required to adjudicate is, whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by us hereinafter, the ingredients depicted in the foregoing two paragraphs are essentially indispensable.

5. Merely on account of the fact, that the release of these monetary benefits was based on a mistaken belief at the hands of the employer, and further, because the employees had no role in the determination of the employer, could it be legally feasible, for the private respondents to assert, that they should be exempted from refunding the excess amount received by them? Insofar as the above issue is concerned, it is necessary to keep in mind, that the following reference was made by a Division Bench of two Judges of this Court, for consideration by a larger Bench:

"In view of an apparent difference of views expressed on the one hand in Shyam Babu Verma and Ors. vs. Union of India & Ors. (1994) 2 SCC 521 and Sahib Ram Verma vs. State of Haryana (1995) Supp. 1 SCC 18; and on the other hand in Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand & Ors. (2012) 8 SCC 417, we are of the view that the remaining special leave petitions should be placed before a Bench of Three Judges. The Registry is accordingly directed to place the file of the remaining special leave petitions before the Hon'ble the Chief Justice of India for taking instructions for the constitution of a Bench of three Judges, to adjudicate upon the present controversy."

(emphasis is ours)

The aforesaid reference was answered by a Division Bench of three Judges on 8.7.2014. While disposing of the reference, the three-Judge Division Bench, recorded the following observations in paragraph 7:

"7. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra-ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice."

(emphasis is ours)

Having recorded the above observations, the reference was answered as under:

"12. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.

13. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for its appropriate disposal."

(emphasis is ours)

...

11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

(i). Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475, wherein this Court recorded the following observation in paragraph 58:

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma v. Union of India, (1994) 2 SCC 521, Union of India v. M. Bhaskar, (1996) 4 SCC 416, V. Ganga Ram v. Director, (1997) 6 SCC 139, Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709, Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492, Punjab National Bank v. Manjeet Singh, (2006) 8 SCC 647 and Bihar SEB v. Bijay Bahadur, (2000) 10 SCC 99."

(emphasis is ours)

First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir's case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is

iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee. In this context, reference may also be made to the decision rendered by this Court in *Shyam Babu Verma v. Union of India* (1994) 2 SCC 521, wherein this Court observed as under:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

(emphasis is ours)

It is apparent, that in Shyam Babu Verma's case (supra), the higher pay- scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.

(ii). Examining a similar proposition, this Court in Col. B.J. Akkara v. Government of India, (2006) 11 SCC 709, observed as under: "28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

(emphasis is ours)

A perusal of the aforesaid observations made by this Court in Col. B.J. Akkara's case (supra) reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that employees in lower rung

of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV - sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

(iii). This Court in *Syed Abdul Qadir v. State of Bihar* (supra) held as follows:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

(emphasis is ours)

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in *Syed Abdul Qadir's* case (supra), that recovery of

excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

....

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs.700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science, the degree of M.Lib. Science being a preferential qualification). For those Librarians appointed prior to 3.12.1972, the educational qualifications were relaxed. In Sahib Ram Verma's case (supra), a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the concerned appellants were ineligible for the same. The concerned appellants were held not eligible for the higher scale, by applying the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it

would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

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 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.

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

7. On a perusal of the impugned orders, it is seen that the impugned orders unilaterally say that on audit objection, it is found out that the revision of the selection grade was made wrongly and therefore, they re-fixed the pay of the Selection

Grade and consequentially, all those benefits, which were given to the petitioners during the relevant years were sought to be recovered from the petitioners, without notice, which under law is not permissible.

8. Further, as rightly pointed out by the learned counsel for the petitioners, in G.O.Ms.No.773, Finance (F.R.I), dated 13.08.1975, it is specifically stated that the excess pay drawn due to the initial fixation under Fundamental Rule 22-B on temporary promotion/appointment, shall not be recovered in such cases or in cases where he is reverted to the lower post subsequently or if the person ceased to hold the higher post due to retirement or for any other reason, and therefore also, in my considered opinion, the recovery sought to be made is illegal.

9. In these cases, as pointed out by the learned counsel for the petitioners, out of aggrieved 14 Scientific Staffs, only 8 persons have come to Court, out of whom, 4 persons have already retired and 2 persons are to retire on October, 2016, and therefore, this Court is of the view that there is no point in seeking for recovery of excess amount paid. At this juncture, it is brought to the notice of this Court by the learned counsel appearing for the petitioners that the retirement benefits were not given to the retired employees so far.

10. For the foregoing discussions held and in the light of the judgment of the Hon'ble Apex Court cited supra, these Writ Petitions are allowed and the impugned orders are set aside. Consequently, connected Miscellaneous Petitions are closed. No costs. It is made clear that the issue relating to payment of retirement benefits, in respect of the petitioners those who have retired, should be taken up in a speedy manner and the retirement benefits should be paid to them as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

paa

To

1. THE SECRETARY

THE STATE OF TAMIL NADU
HOME DEPARTMENT
FORT ST. GEORGE
CHENNAI-600 009.

2. THE DIRECTOR I/C.

FORENSIC SCIENCES DEPARTMENT
KAMARAJAR SALAI
MYLAPORE, CHENNAI-600 004.

3 THE PRINCIPAL ACCOUNTANT

GENERAL (A & E) PENSION
4 SECTION 361 ANNA SALAI
TEYNAMPET CHENNAI 600 018.

4 THE PRINCIPAL SECRETARY TO GOVERNMENT,
HOME (POLICE-18) DEPARTMENT,
SECRETARIATE, CHENNAI -9.

- + 1 cc to M/s. K.R. Ramesh Kumar, Advocate SR.39763
- + 6 ccs to M/s. L. Chandrakumar, Advocate SR.39506
- + 1 cc to M/s. J. Sreevidya, Advocate SR.39406
- + 1 cc to M/s. Ravi Shanmugam, Advocate SR.39265
- + 1 cc to Government Pleader SR.39691

W.P.Nos. 28023 of 2013, 17870 of 2013,
32235 of 2013, 26682 of 2013,
26683 of 2013, 8998 of 2013,
29435 of 2013, 31555 of 2013
and 854 of 2014

M.P.Nos.1 and 2 of 2013 in W.P.No.28023 of
2013,

M.P.Nos.1 of 2013 & 1 of 2015 in
W.P.No.17870 of 2013

M.P.No.1 of 2013 in W.P.No.32235 of 2013

M.P.Nos. 1 and 2 of 2013 in W.P.No.26683 of
2013

M.P.No.2 of 2013 in W.P.No.8998 of 2013

M.P.Nos.1 and 2 of 2013 in W.P.No.29435 of
2013

M.P.Nos.1 and 2 of 2013 in W.P.No.31555 of
2013

and
M.P.Nos.1 of 2014 & 1 of 2015 in W.P.No.854
of 2014

SSK (CO)

EU 21.09.16