

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.35963 of 2015

ORDER:

This writ petition is filed seeking a writ of mandamus, declaring the action of respondent No.1 in extending the office order No.CWC/1-CDA-Switch over IDA/RECTT/12B, dated 28.05.2014 to the petitioners, who have retired by superannuation in the months of July and May, 2013 itself and proceeding to recover the amounts from them, as illegal, arbitrary and unconstitutional and consequentially direct the respondents to extend the post-retirement benefits without applying the impugned order, dated 28.05.2014.

Heard Sri Vedula Srinivas, learned counsel for the petitioners and Sri A.K.Jayaprakash Rao, learned Standing Counsel for the respondents.

It has been contended by the petitioners that petitioner Nos.1 and 2 have retired from service on attaining the age of superannuation on 31.07.2013 and 31.05.2013 respectively. After their retirement, the respondents had issued the impugned orders on 28.05.2014, wherein an amount of Rs.2,18,251/- was sought to be recovered from petitioner No.1 and Rs.2,35,020/- was sought to be recovered from petitioner No.2.

Learned counsel for the petitioners would contend that the respondents are not entitled to recover the amounts in question from the petitioners, who have already retired from service. In support of his contention, the learned counsel has relied upon a judgment rendered by the Hon'ble Supreme Court in *State of Punjab v Rafiq Masih*¹ wherein the Hon'ble Supreme Court, at para-18 of the said judgment, has given

¹ (2015) 4 SCC 334

certain situations where the amounts paid to the employees erroneously cannot be recovered. Para-18 of the said judgment reads as under:

“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

A perusal of the above said judgment would disclose that recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery, would be impermissible in law.

The petitioners have retired from service in 2013 and almost after nearly one year, the respondents have passed the impugned orders recovering the amounts, which is impermissible, as per the judgment of Hon'ble Supreme Court, referred to supra. Though the learned counsel for the respondents submitted that no recoveries were made from the

pensionary benefits, but he did not state that the respondents have recalled the impugned order.

In view of the above, the writ petition is allowed and the impugned order, dated 28.05.2014, is set aside. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

ABHINAND KUMAR SHAVILI ,J

Date: 18.04.2018
Dsr

