

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.26163 of 2015

ORDER:

This writ petition is filed seeking to issue a writ of mandamus, declaring the proceedings No.129/230/83/Adm.1.2, dated 10.07.2015 and the proceedings No.328/UAD/Gaz/2015, dated 06.08.2015 of respondent No.1, as illegal, arbitrary, violative of Articles 12 and 21 of the Constitution of India and also the principles of natural justice, and by nullifying the same, to direct the respondents to pay pension and pensionary benefits to the petitioner without reference to the impugned orders.

Heard Sri P.B.Vijaya Kumar, learned counsel for the petitioner and Sri Ch.Lakshmikanth, learned standing counsel for Osmania University.

It has been contended by the petitioner that she was initially appointed as Lecturer in History in October, 1988. After rendering considerable length of service, the petitioner was promoted as Reader on 14.12.1992 and subsequently, she was promoted as Professor in History. It has further been contended by the petitioner that she has retired from service on attaining the age of superannuation on 31.07.2015, and after retirement, the respondents had issued the impugned proceedings, wherein an amount was sought to be recovered from the petitioner on the ground of wrong fixation of her pay, consequent upon an audit objection was raised by the auditors.

Learned standing counsel for the Respondent University has contended that the petitioner was erroneously extended the benefit of certain amount to which the petitioner is not entitled and the same has to be recovered from the petitioner.

Learned counsel for the petitioner would contend that the respondents are not entitled to recover the amount in question from the petitioner who has 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 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."

¹ (2015) 4 SCC 334

The petitioner has retired from service in July, 2015 and after her retirement, 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.

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, would be impermissible in law.

In view of the above, the writ petition is allowed and the impugned proceedings, dated 10.07.2015 and 06.08.2015, are set aside. No order as to costs.

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

Date: 23.04.2018
Dsr

ABHINAND KUMAR SHAVILI, J

