

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.39107 of 2016

ORDER :

The petitioner retired as a Senior Grade Lecturer from V.V. College in the year 1995 on attaining the age of superannuation of (58) years on 31.07.1995. He was drawing pension without any break from the Office of the Accountant General, Andhra Pradesh under P.P.O.No.06.SGC.029774 vide Letter No.P2/1/N.319/SP237/1995-07 dt.14.08.1995.

2. Admittedly he was being paid pension with effect from 01.08.1995 duly consolidating his pension from time to time in Revised Pay Scale (R.P.S.), 1999, Revised Pay Scale (R.P.S.), 2005 and Revised Pay Scale (R.P.S.), 2010 in the State Scale from 01.01.1996.

3. His pension was revised in terms of G.O.Ms.No.31 Higher Education (UE.II) Department dt.24.05.2013, and was consolidated from time to time under University Grants Commission Central Scales with effect from 01.01.1996 to 31.08.2014. The said G.O.Ms.No.31 Higher Education (UE.II) Department dt.24.05.2013, empowered the Pension Disbursement Officers to recover from a pensioner, if any excess payment has been made.

4. Consequent upon this Pay Revision, there was allegedly an excess amount of Rs.65,735/- found paid to him being difference between the State Scale and the Central Scale.

5. On 14.09.2005, a Circular Memo No.31944-C/212/PSC 2005 (for short, the impugned memo) had been issued by the Government of Andhra

Pradesh Finance (PSC) Department, stating that excess payments made to pensioners without their knowledge on account of wrong calculation or other reasons can be recovered in equal monthly instalments not exceeding (12) in number.

6. Therefore, the respondents started recovering the said amount of Rs.65,735/- at the rate of Rs.3,000/- pm with effect from 01.04.2015 from petitioner's pension.

7. On 08.07.2015, the petitioner was informed by the Assistant Pension Payment Officer that consequent on revision of his pension vide G.O.Ms.No.31 Higher Education (UE.II) Department dt.24.05.2013, an amount of Rs.65,735/- was sought to be recovered as excess payment pursuant to the impugned Memo dt.14.09.2005.

8. Aggrieved by the same, the petitioner filed the present Writ Petition assailing the impugned Memo dt.14.09.2005 of the 1st respondent as well as the proceedings in G.O.Ms.No.31 Higher Education (UE.II) Department dt.24.05.2013, issued by the 1st respondent, and for a direction to the respondents to stop recovery of Rs.65,735/- from his pension and for refund of the amount deducted.

9. The petitioner contended that the recovery affected from his pension by the respondents is illegal, arbitrary and violates Articles 14 and 21 of the Constitution of India since he had not been guilty of furnishing any incorrect information which had led the respondents to commit any mistake in making payment to him. He contended that since there was no fraud or misrepresentation committed by him, the respondents cannot make the

recovery of the said amount from his pension. He placed reliance on the decision of the Supreme Court, reported in **State of Punjab and others v. Rafiq Masih (White Washer), etc.**¹.

10. In that case, the Supreme court held that recovery of monetary benefits wrongly extended to employees in situations where there is no misrepresentation or fraud on the part of an employee, cannot be recovered where such recovery would result in hardship of a nature which would far outweigh the equitable balance of the employer's right to recover; that the right to recover being pursued by the employer, would have to be compared, with the effect of the recovery on the concerned employee; and if the effect of the recovery from the concerned employee would be more unfair, more wrongful, more improper and more unwarranted than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary to effect the recovery. It held that in such situations, the employee's right would outbalance, and therefore eclipse the right of the employer to recover. The Court summarized the situations wherein recoveries by the employer would be impermissible in law :

"18. ...

- (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.*

¹ (2015) 4 SCC 334

- (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."*

11. Though the Writ Petition was admitted on 14.11.2016, and time was taken to file a counter-affidavit and the matter underwent several adjournments on 09.12.2016, 05.02.2018, 07.02.2018, 22.02.2018 and 08.03.2018, no counter-affidavit was filed by the respondents.

12. The learned Government Pleader for Services, however, made submissions on the matter on 08.03.2018, and thereafter, the matter was reserved for orders.

13. The learned Government Pleader for Services, appearing for respondents, did not dispute the legal principles laid down in **Rafiq Masih (White Washer)** (1 supra).

14. The Party-in-person contended that his case falls within categories (ii), (iii) and (v) mentioned in the above decision.

15. In my considered opinion, the recovery of the amount from the petitioner, now aged 81 years old of said amount at fag end of his life , after alleged revision of pension on basis of G.O.Ms.No.31 dt.24.5.2013 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. The fact that the wrong/excess payment is not account of any misrepresentation made by the petitioner is not disputed by the learned Government Pleader for Services,

appearing for respondents. Therefore I hold that recovery of the said amount could not have been made from petitioner's pension.

16. In this view of the matter, I hold that recovery of a sum of Rs.65,735/- from the petitioner at the rate of Rs.3,000/- per month commencing from 01.04.2015 for alleged excess payments which had been made to petitioner is arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India.

17. Accordingly, the Writ Petition is allowed; recovery of a sum of Rs.65,735/- from the petitioner at the rate of Rs.3,000/- per month commencing from 01.04.2015 for alleged excess payments which had been made to petitioner is arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India; proceeding Lr.No.B3/3885/APPO/Banks & MO/2015 dt.8.7.2015 issued by the Asst. Pension payment Officer, pension payment Office, Bank and Money order, Hyderabad addressed to petitioner basing on Memo dt.14.09.2005 of the 1st respondent as well as the proceedings in G.O.Ms.No.31 Higher Education (UE.II) Department dt.24.05.2013 issued by the 1st respondent, is set aside. Consequently, the respondents are directed to repay the amount recovered from the petitioner within a period of six (06) weeks from the date of receipt of copy of the order. No order as to costs.

18. As a sequel, miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 03.04.2018

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