

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.20698 of 2005

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to debit order dated 26.8.2005 on the file of the 3rd respondent and to quash the same with all consequential benefits including refund of recovered amount.

2. When this matter is taken up for hearing, the learned Counsel for the petitioner submits that the respondents have recovered an amount of Rs.1,34,881/- from the pensionary benefits of the petitioner and that the respondents have recovered the said amount on the ground that the pay of the petitioner was erroneously fixed and they have paid the erroneous pay for 23 years. The learned Counsel for the petitioner submits that the issue raised in this writ petition is covered by the judgment of the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (white Washer) etc,*** dated 18.12.2014 in Civil Appeal No.11527 of 2014, wherein the Hon'ble Supreme Court held as under:

“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, summarize 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.”

While relying upon the above judgment, the learned Counsel for the petitioner contended that the case of the petitioner falls under (iii) of the above said observations made by the Hon'ble Supreme Court.

3. The learned Standing Counsel for the respondents contended that the amount erroneously paid to the petitioner was recovered and that the respondents are justified in recovering the amount, and there are no merits in this writ petition.

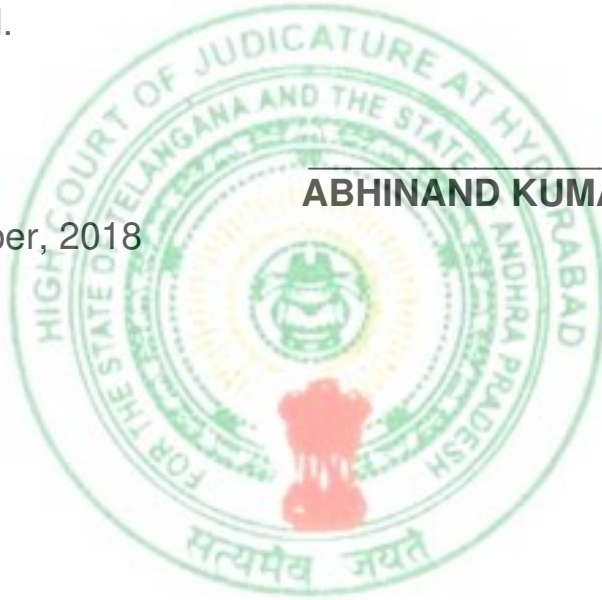
4. This Court having considered the rival submissions made by the parties is of the view that the issue raised in this writ petition is squarely covered by the judgment of the Hon'ble Supreme Court (referred to supra). Therefore, the Writ Petition is allowed and the respondents are directed to refund the

amounts recovered, to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

5. It is made clear that in pursuance of the interlocutory order passed by this Court on 21.9.2005, if the respondents have not recovered the amount from the petitioner, the same shall not be recovered. If the respondents recovered the amount, the same shall be refunded to the petitioner. No costs. Consequently, miscellaneous petitions pending if any, shall stand closed.

23rd November, 2018
Nn

ABHINAND KUMAR SHAVILI, J



HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



Writ Petition No.20698 of 2005
(disposed of)

23rd November, 2018

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