

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

and

THE HON'BLE MS JUSTICE J. UMA DEVI

Writ Petition No.22061 of 2018

% Date: 12-09-2018

M.Anjaneyulu S/o M.Bheemanna, Aged 59 years,
Occ: Senior Superintendent, Prl. District Court,
Kurnool, R/o 201, 81-250-B/5, Udyoga Nagar,
Kurnool-518 002

... Petitioner

Vs.

\$ 1. High Court of Judicature at Hyderabad
for the State of Telangana and the State of
Andhra Pradesh, Rep. by its Registrar (Admn.),
Hyderabad

2. The Principal District Judge, Kurnool

3. The State of A.P., Rep. by its Secretary to Govt.,
Law & Legislative Affairs, Amaravati, A.P.

... Respondents

! Counsel for Petitioner : Mr. M.V. Rama Rao

Counsel for Respondents 1 to 3: Ms. V.Uma Devi,
Standing Counsel for High Court

< Gist:

> Head Note:

? Cases referred:

Nil

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI**

Writ Petition No.22061 of 2018

ORDER: *(per V.Ramasubramanian, J.)*

Challenging an order of recovery of excess pay drawn by the petitioner, due to erroneous fixation of pay, the petitioner, working as a Senior Superintendent in the Judicial Ministerial Service has come up with the above writ petition.

2. Heard Mr. M. V. Rama Rao, learned counsel for the petitioner and Ms. V. Uma Devi, learned Standing Counsel for the High Court.

3. The petitioner was originally appointed as a Process Server in the year 1981. He was promoted as Junior Assistant in the year 1983 and as Senior Assistant in 2006. He was promoted as Superintendent in the year 2007 and further promoted as Senior Superintendent in the year 2014, but with effect from 2012. He has now retired on attaining the age of superannuation on 30-6-2018.

4. The recommendations of Shetty Commission were implemented in the combined State of Andhra Pradesh under G.O.Ms.No.50, Law (LA & J-Home Courts.D) Department, dated 23-04-2009, with effect from 01-04-2003. It appears that after the issue of the Government Order, the petitioner got his pay fixed at a particular stage in the category of Junior Assistant with effect from 01-07-1998. Thereafter, his pay was fixed at a particular stage in the cadre of Senior Assistant, with effect from 01-05-2005, by adding one more increment. When he was promoted as Superintendent, the

same procedure was followed by adding one more increment with effect from 01-05-2007. The same story repeated when he was promoted as Senior Superintendent.

5. Upon coming to know of the manner in which G.O.Ms.No. 50, dated 23-04-2009, was implemented with effect from 01-07-1998, the High Court issued a clarification on 28-11-2016, pointing out that the benefits of G.O.Ms.No.50 are available only from 01-04-2003. The High Court directed all District Judges to initiate proceedings for rectification of anomalies and for recovery.

6. A further clarification was issued by the Registry on 18-04-2017 to the effect that the employees are not entitled to additional increments at every stage of the scale of pay, either on promotion or on appointment to the special grade post/special promotion post etc.

7. Pursuant to the above clarifications, the 2nd respondent herein issued a show cause notice dated 10-07-2017 calling upon the petitioner to show cause as to why the excess pay drawn by him due to erroneous fixation, should not be recovered. The petitioner submitted a reply dated 20-07-2017.

8. Thereafter, the 2nd respondent passed an order dated 08-06-2018, directing the recovery of the excess pay drawn. Challenging the same, the petitioner has come up with the above writ petition.

9. The trump card of the petitioner in this case is the judgment of the Supreme Court in ***State of Punjab v. Rafiq Masih (Civil Appeal No.11527 of 2014, dated 18-12-2014)***. The Supreme Court summarised the situations under which recovery of excess amounts

paid to the employees would be impermissible in law. Paragraph-12 of the judgment of the Supreme Court reads as follows:

“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.”

10. Therefore, the only issue that arises for consideration is as to whether the case of the petitioner would fall under any one of the situations narrated by the Supreme Court in the above case.

11. But before we do so, it may be necessary to see how the law swung from one end to the other on the issue of recovery of excess pay drawn by an employee. In the first judgment in ***Shyam Babu Verma v. Union of India ((1994) 2 SCC 521)***, the Supreme Court found that the fixation of pay was wrong, but that the same was found out only after more than 10 years. Therefore, the Supreme Court held that the recovery of excess amount may be unjust and improper.

12. In its next judgment in ***Sahib Ram Verma v. State of Haryana ((1995) Supp. 1 SCC 18)***, the Supreme Court found that the individual concerned did not possess the required educational qualifications and that the order of relaxation was erroneous. But, the Court held that the grant of revised scale was not on account of any misrepresentation on the part of the employee and that therefore, the excess pay need not be recovered.

13. In ***Col. B. J. Akkara v. Government of India ((2006) 11 SCC 709)***, the Supreme Court clarified that in cases where the Supreme Court prohibited recovery of excess pay, the courts did not recognise any right in the employees, but granted relief in equity in the exercise of judicial discretion, so as to remove the hardship that may be caused to the employees. The court took note of the fact that a Government servant, particularly in the lower rungs of service, would spend all the emoluments received every month and that it would be inequitable to order recovery after he had received the excess payment for a long period. But, the Court also cautioned that where the employee had knowledge about the excess pay or where the error was detected or corrected within a short time, the courts will not grant relief against recovery.

14. Then came the decision in ***Syed Abdul Qadir v. State of Bihar ((2009) 3 SCC 475)***. In this case, the court reiterated that the relief against recovery is not granted by courts on account of any right in the employees, but granted in equity exercising judicial discretion.

15. In ***Chandi Prasad Uniyal v. State of Uttarakhand*** ((2012) 8 SCC 417), the Supreme Court took note of the decisions in ***Shyam Babu Verma, Sahib Ram Verma, Col. B.J. Akkara and Syed Abdul Qadir*** and held that those decisions did not lay down any proposition of law to the effect that it is only in cases of misrepresentation or fraud on the part of the employees that excess pay could be recovered. The Court indicated in paragraph 16 of its decision that any amount paid without authority of law can always be recovered barring few exceptions of extreme hardships, but not as a matter of right.

16. Upon finding a conflict between two sets of decisions, a Two-Member Bench of the Supreme Court made a reference of the issue to a Larger Bench. On 08-07-2014, a Three-Member Bench of the Supreme Court disposed of the reference, holding that the decisions of the Supreme Court made in exercise of the extraordinary powers under Article 142 of the Constitution, cannot be taken to be propositions of law laid and that there was actually no conflict of views expressed by the Supreme Court between the decisions in ***Shyam Babu Verma*** and ***Sahib Ram Verma*** on one hand and ***Chandi Prasad Uniyal*** on the other hand. Accordingly, the Three-Member Bench sent the matter back to the Division Bench for appropriate disposal. Therefore, the Two Member Bench dealt with the issue in ***State of Punjab v. Rafiq Masih*** referred to above. It was in that decision that the principles that we have extracted in paragraph 9 above were enunciated.

17. Keeping the above in mind, if we come back again to the case on hand, it is seen that the petitioner is not in the lower rung of service. The petitioner is a Senior Superintendent. In the Judicial Ministerial Service, there are 17 categories of posts. The top most category of post is that of Chief Administrative Officer. This post is in Category-1. It is followed by the post of Senior Superintendent, which is in Category-2 (the post in which the petitioner is employed). The lowest category of post is Office Subordinate/Attender which is in Category-17. Therefore, equitable considerations may not arise in the case of an employee like the petitioner.

18. Though recovery is sought to be made towards the fag end of the career of the petitioner, the excess payment was detected within 5 years. Therefore, we do not think that this recovery is iniquitous or harsh or arbitrary, even if we go by the parameters of the decision in ***State of Punjab v. Rafiq Masih***.

19. As we have pointed out earlier, the recommendations of Shetty Commission were implemented with effect from 01-04-2003. But unfortunately, additional increments were granted at every stage from 01-07-1998, without the authority of law. In the year 2006/2007 or so, when G.O.Ms.No.50 was sought to be implemented, the petitioner was promoted as Superintendent. Therefore, we do not think that the recovery in this case would be too harsh warranting interference of this Court.

Accordingly, the writ petition is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 12-09-2018

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