

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**WRIT PETITION No.12264 OF 2004****ORDER:**

This writ petition is filed seeking to declare the action of the respondents in treating the family planning increment, which was awarded in the month of October, 1995 and the 4th stagnation increment which was awarded on 4.4.2000, as illegal and against the memorandum of settlement arrived between the A.P. Cooperative Banks Association, Hyderabad, and A.P. Bank Employees Federation, Hyderabad on 5.6.1997, against the principles of natural justice and violative of Article 311 of the Constitution of India and consequently direct the respondents to re-fix the retirement benefit without deducting the 4th stagnation increment and family planning increment.

Heard Sri K. Venkateswara Rao, learned counsel for the petitioner and Sri K.V. Seshagiri Rao, learned Standing Counsel for the respondents.

It has been contended by the learned counsel for the petitioner that the petitioner had retired from service on attaining the age of superannuation on 30.6.2003 and thereafter words, the respondents herein have passed the impugned orders on 8.8.2003 wherein an amount of Rs.41,602/- was sought to be adjusted from the terminal benefits of the petitioner on the ground that erroneously the petitioner was extended stagnation increment. The petitioner has contended that after his retirement, the respondents have issued the impugned proceedings dated

8.8.2003, without giving any opportunity to the petitioner and the said amount of Rs.41,602/-, was recovered from the petitioner and adjusted towards his terminal benefits.

Learned counsel appearing for the petitioner has relied upon a judgment rendered by the Hon'ble Supreme Court in **State of Punjab and others vs. Rafiq Masih (White Washer) and others**¹, wherein the Hon'ble Supreme Court, has held that no amount can be recovered from the retired employees.

Learned Standing Counsel appearing for the respondents had contended that the respondents have rightly recovered the amounts and adjusted from the retiral benefits and no illegality has been committed by the respondents and the writ petition is liable to be dismissed.

This Court having considered the rival submissions made by the parties, is of the considered view that the Hon'ble Supreme Court in a case reported *supra* has held as follows:

“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 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.

¹ (2015) 4 SCC 334

(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."

Admittedly, the case of the petitioner falls in (ii) of the above said situations and the respondents cannot recover and adjust the amount from the petitioner towards the terminal benefits.

In view of the above, the writ petition is allowed setting aside the impugned order and the respondents are directed to return the amount of Rs.41,602/- (Rupees forty one thousand six hundred and two only), which was adjusted towards the terminal benefits of the petitioner, within a period of eight weeks from the date of receipt of copy of this order. No order as to costs.

Miscellaneous Petitions, if any pending in this writ petition shall also stand closed.

ABHINAND KUMAR SHAVILI,J

Date:26.09.2018.
Gk

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