THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NOs. 9601 AND 9676 OF 2005

COMMON ORDER:

Both these Writ Petitions are being disposed of by way of this common order as the issue in both these matters is one and the same.

For the sake of convenience, the facts in Writ Petition No.9601 of 2005 are taken into consideration.

The petitioners in both these Writ Petitions are employees of Acharya N.G. Ranga Agricultural University and the respondents were paying HRA to the petitioners as per the rules. The respondents have paid HRA right from the year 1997 till 2005. In the year 2005, the respondents have issued the impugned orders vide proceedings dated 31.3.2005 based on certain clarifications received from the Government to the effect that excess HRA amounts were paid to the petitioners. Challenging the same, the present Writ Petitions are filed.

Learned counsel for the petitioners submits that this Hon'ble Court was pleased to grant interim stay not to recover the excess amounts from the petitioners vide orders dated 28.4.2005. Learned counsel for the petitioners also submits that many of the petitioners have attained the age of superannuation and contends that the issue raised in these Writ Petitions is similar to the judgment rendered by the Hon'ble supreme Court in the case of *STATE OF PUNJAB AND OTHERS vs. RAFIQ MASIH (WHITE WASHER) AND OTHERS* [1] wherein the Hon'ble Supreme Court at paragraph-18 had fixed certain parameters under certain circumstances holding that the excess amounts paid to the employees cannot be recovered. Learned counsel for the petitioners has

[1] (2015) 4 SCC 334

drawn the attention of this Court to Clause-iii in Paragraph-18 of the said judgment whereunder it has been held as follows:

> "18. It is not possible to postulate all situations of hardship which would govern employees on the sisue 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:
>
> ……-
>
> (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."

Learned counsel for the petitioners further submits that as the respondents have paid HRA to the petitioners for more than five years, in view of Clause-iii of Paragraph-18 referred to supra, the respondents cannot be allowed to recover the said amounts and contends that appropriate orders be passed by setting aside the impugned orders.

Learned Standing Counsel for the respondents submits that the respondent University had ordered recoveries of the amounts in pursuance to the clarifications issued by the State Government. The petitioners are not entitled for HRA @ 15% and they are actually entitled for only 7 ½ % and the excess amounts were paid erroneously. Hence, no irregularity or illegality has been committed by the respondent University in recovering the excess amounts paid to the petitioners.

Having considered the rival contentions, it is seen that the excess amounts were paid to the petitioners for more than five years. The Hon'ble Supreme Court, in the judgment referred to supra, held that any amounts paid over and above five years cannot be recovered from the employees. Admittedly, in the instant case, the respondent University had paid excess amounts for more than five years to the petitioners and the issue raised by the petitioners is squarely covered by the judgment rendered by the Hon'ble Supreme Court cited supra. Hence, the impugned orders are liable to be set aside.

Accordingly, the Writ Petitions are allowed by setting aside the impugned orders.

It is needless to state that any amounts recovered from the terminal benefits of the petitioners who have retired, have to be refunded to the petitioners.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI ,J

Date: 24.12.2018

KPM