

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 35007 of 2018

O R D E R:

Initially, petitioner was appointed as Cartographer, which post is equivalent to documentation Officer, against the post sanctioned by the University Grants Commission (UGC) on 23.02.1984 and accordingly, she joined duty on 05.03.1984. Subsequently, she was promoted as Lecturer on 13.01.1992 and thereafter, promoted as Associate Professor. Thereafter, on 31.07.2017, she retired from service as Professor by drawing UGC pay scales as she is entitled. While so, respondents passed the impugned proceedings, dated 28.06.2017, directing to recover the excess payment made from 04.12.2006 to 30.06.2017 amounting to Rs.4,19,566/- and thereafter, the same was recovered from the pensionary benefits of the petitioner. Challenging the same the present writ petition is filed.

2. Heard Smt.D.Padmavathi, learned Counsel for petitioner and Sri C.S.Jagannadha Rao, learned Standing Counsel appearing for respondent-University.

3. It has been contended by learned counsel for petitioner that the impugned order dated 28.06.2017 is liable to be set aside in view of the law laid down by the Hon'ble Supreme Court, in **State of Punjab V. Rafiq Masih**¹.

4. On the other hand, learned counsel for respondent-University contends that while the petitioner was in service, the university paid excess amount to her and hence, it has rightly passed the impugned order of recovering the same from the pensionary benefits of the petitioner and hence, there are no merits in the writ petition and the same is liable to be dismissed.

5. Having considered the rival submissions of both the counsel, this court is of the considered view that the decision cited (supra 1) have postulated certain situations where amounts paid to the employees cannot be recovered by the employer. The relevant paragraph is extracted hereunder:

"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 hereinabove, we may, as a

¹ 2015(4) SCC 334

ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D Service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (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.*
- (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 employees, 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."*

6. Therefore, the petitioner's case is squarely covered by the decision cited supra (1) and following the same, the impugned order passed by the respondent-university is set aside. The

respondents are directed to release the amount, which was withheld from the terminal benefits of the petitioner within a period of eight weeks from the date of receipt of the copy of the order.

7. With the above observations, the writ petition is disposed of at the stage of admission. No costs.

8. Miscellaneous Petitions, if any, pending in this writ Petition shall stand closed.

01.10.2018
Mjl/*



ABHINAND KUMAR SHAVILI, J