

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.9045 of 2019

ORDER

This writ petition is filed seeking to issue a Writ of Mandamus, declaring the proceedings MR.No.61/108/84/Adm.1-2, dated 27.03.20195 and all consequential proceedings as illegal, arbitrary, and violative of Articles 14 and 21 of the Constitution of India.

Heard Sri P.B.Vijaya Kumar, learned counsel for the petitioner and learned standing counsel appearing for the Osmania University.

It is the case of the petitioner that initially, he was appointed as Assistant Professor on 5-10-1988. After rendering considerable length of service, he was promoted as Associate Professor on 27.07.1998 and subsequently, he was promoted as Professor on 27.07.2006. The petitioner is due to retire on 30-04-2019. Based on some audit objections, the University has undertaken re-fixation of pay of the petitioner after lapse of 11 years and intends to recover the difference of salary from his terminal benefits. Accordingly, *vide* proceedings dated 27.3.2019, the University has ordered cancellation of selection grade of

the petitioner and recovery of excess payment of pay and allowances from 27.07.1998 to 08.05.2007 in Reader's scale and from 9.5.2007 to 31.3.2019 in Professor's scale, amounting to Rs.6,02,964/- from his pensionary benefits. Hence, the Writ Petition.

Learned Standing Counsel for the respondent-University contends that the petitioner was erroneously extended the benefit of certain amount to which the petitioner is not entitled and the same has to be recovered from the petitioner.

Learned counsel for the petitioner would contend that the respondents are not entitled to recover the amount in question from the petitioner who is retiring from service on 30-04-2019. In support of his contention, learned counsel has relied upon a judgment rendered by the Hon'ble Supreme Court in *State of Punjab v Rafiq Masih*¹ wherein the Hon'ble Supreme Court, at para-18 of the said judgment, has given certain situations where the amounts paid to the employees erroneously cannot be recovered. Para-18 of the said judgment reads as under:

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of

¹ (2015) 4 SCC 334

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:

- (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 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."

The petitioner is due to retire on 30-04-2019. The respondents have passed the impugned orders recovering the amounts, which is impermissible as per the judgment of Hon'ble Supreme Court, referred to supra.

A perusal of the above said judgment would disclose that recovery from the retired employees, or the employees who are due to retire within one year, would be impermissible in law.

In view of the above, the writ petition is allowed and the impugned proceedings, dated 27.03.2019 are set aside.

No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

26th April, 2019
rkk

