

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.14593 of 2019

ORDER:

The writ petition is filed seeking the following relief :

“.... to issue a writ, order or direction more in the nature of Mandamus declaring the order vide Gratuity No. Police/ Hyd/ 191/ A1/ DAO-Hyd/ 2017-18 dated 2.1.2018 issued by the Director of State Audit, Telangana, Hyderabad in so far as recovering an amount of Rs.3,32,518/- from the gratuity of the petitioner is concerned as being illegal, arbitrary, unjust and contrary to the parameters passed by the Honorable Supreme Court in respect of recoveries from the employees of the Government in Civil Appeal No.11527 of 2014, dated 18.12.2014 and consequently set aside the same insofar as recovery from the gratuity of the petitioner is concerned and consequently hold that the petitioner is entitled for refund of withheld amount of Rs.3,32,518/- with all attendant benefits including restoration of pension based on the last pay drawn by the petitioner and interest on belated payments etc.”

Heard Mr. A. Tiruptahi Goud, learned counsel for the petitioner and learned Government Pleader for Home.

Petitioner contends that he was initially appointed as Constable with the respondents and later on he was promoted as Head Constable. He retired from service on 28.02.2017 on attaining the age of superannuation. He submits that after retirement, the respondents have issued proceedings dated 02.01.2018 stating that the petitioner was erroneously paid excess amount of Rs.3,32,518/- and that the same would be recovered from the pensionary benefits of the petitioner. Challenging the same, the present writ petition is filed.

The counsel for the petitioner submits that the issue raised in this writ petition is squarely covered by a judgment rendered by the Hon'ble Supreme Court in Civil Appeal No.11527 of 2014 dated

18.12.2014 i.e. *STATE OF PUNJAB v. RAFIQ MASIH* wherein the Supreme Court had framed certain guidelines where the amount paid to the employees cannot be recovered. Therefore, the counsel for the petitioner submits that appropriate orders be passed in the writ petition directing the respondents to refund the recovered amount from the gratuity of the petitioner in terms of the law laid by the Supreme Court *supra*.

The learned Government Pleader appearing for the respondents submits that the respondents, on noticing that the petitioner was erroneously paid excess amount, have passed the impugned order and no illegality or irregularity has been committed by the respondents. Therefore, there are no merits in the writ petition and it is liable to be dismissed.

This Court, having considered the rival submissions made by both parties, is of the view that the issue raised in the writ petition is squarely covered by the judgment of the Hon'ble Supreme Court in Civil Appeal No.11527 of 2014 dated 18.12.2014 i.e. *STATE OF PUNJAB v. RAFIQ MASIH* wherein the Supreme Court has categorically held as under:

“6. 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."

Admittedly, as the case of petitioner falls under aforesaid clauses (ii) and (iii) and as the respondents have paid the said excess amount for more than five years, the writ petition is allowed and the respondents are directed to refund the amount of Rs.3,32,518/- recovered from the gratuity of the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions shall stand closed. There shall be no order as to costs.

ABHINAND KUMAR SHAVIL, J

Date:05.08.2019
Prv