

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (TR) No.3625 of 2017

ORDER:

The writ petition is filed with the following prayer:

"... the Hon'ble Court may be pleased to call for the records relating to the impugned D.O.No.4326, Proc.No.J2/693/2014 dated 31.07.2014 issued by the 1st respondent and its connected Gratuity No.Police/HYD/2841/RG/2014/14.11.2014 dated 14.11.2014 issued by the 3rd respondent as illegal arbitrary unjust and void and without jurisdiction in terms of the law laid down by the Hon'ble Apex Court in 1994 Supreme Court Cases (L&S) 683 and the Judgement of the Hon'ble High Court reported in 2014 (1) ALT 289 (DB) and consequently hold that the applicant is entitled for refund of the amount of Rs.1,89,017/- recovered from the gratuity of the applicant after his retirement with interest at 12 per annum with all consequential benefits and pass such other and further orders."

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

3. 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 31.03.2014 on attaining the age of superannuation. He submits that after retirement, the respondents have issued proceedings dated 31.07.2014 revising the pay of the petitioner from 1994 till retirement and came to the conclusion that the petitioner was erroneously paid excess amount and that the same would be recovered from the pensionary benefits of the petitioner. Thereafter, the respondents have issued consequential proceedings dated 14.11.2014 recovering an amount of Rs.1,89,017/-. Challenging the same, the present writ petition is filed.

4. 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.

5. The learned Government Pleader appearing for the respondents submits that the respondents, on noticing that the petitioner was erroneously paid excess amount in the pay scales, have passed appropriate orders 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.

6 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 R.1,89,017/- 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 SHAVILI, J

July 16, 2019
DSK