HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.21269 of 2017 & 31673 of 2018

COMMON ORDER:

Both these writ petitions are being disposed of by this common order, as the issue raised in these two writ petitions is one and the same.

In W.P.No.21269 of 2017, the petitioner is challenging the action of respondents in ordering recovery against the petitioner vide impugned Memo dated 10.05.2017, issued by the 2nd respondent just one month prior to the retirement of the petitioner, that too, on the ground that the petitioner was erroneously granted increments way-back in 1992.

When the above writ petition has come up for admission, this Court, vide order dated 29.06.2017, granted interim suspension of the impugned Memo dated 10.05.2017.

In W.P.No.31673 of 2018, the petitioner is challenging the action of respondents in not sanctioning pension and other retiral benefits to him, inspite of the fact that the impugned Memo dated 10.05.2017, was suspended by this Court.

Counsel for the petitioner submits that the issue raised in these writ petitions is squarely covered by the judgment rendered by the Hon'ble Supreme Court in **State of Punjab & others v. Rafiq Masih (White Washer)**[1], wherein, the Hon'ble Supreme Court framed certain guidelines under which, the employer cannot recover the

[1] (2015) 4 SCC 334

excess amounts erroneously paid to the employees. Counsel for petitioner submits that the Hon'ble Supreme Court, in para 18 of the said judgment, has held as under :

> *"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 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 fro 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."*

It is contended by the learned counsel for petitioner that as per guideline (iii), no recovery can be made, where excess payment has been made for a period in excess of five years before the order of recovery is issued. Admittedly, in the instant case, the excess increment was paid to the petitioner for the period from 29.03.1992 to 19.05.2000 and the said amount was sought to be recovered by the impugned Memo dated 10.05.2017. Therefore, the impugned Memo is contrary to the law laid down by the Hon'ble Supreme Court and the same is liable to be set aside with a further direction directing the respondents to release the pension and other retiral benefits to the petitioner.

The learned Government Pleader appearing for respondents has contended that the petitioner was erroneously granted increments for having passed the Accounts Test, but the petitioner has not actually passed the said test, therefore, the respondents have issued proceedings on 29.08.2002 to recover the said amounts, but so far, the said proceedings dated 29.08.2002 could not be implemented and it has come to the notice of respondents that only one month prior to retirement of petitioner, the respondents have issued Memo dated 10.05.2017 for recovery of excess amount. The Government Pleader further contended that the petitioner was erroneously given increment, to which, he was not actually entitled to and the said mistake/error was sought to be corrected, as the mistakes can be corrected at any point of time, and that there are no merits in these writ petitions and the same are liable to be dismissed.

This Court, having considered the rival submissions made by the parties, is of the considered view that the issue raised in the present writ petitions is squarely covered by the judgment of the

Hon'ble Supreme Court, referred supra and the petitioner's case falls under Clause (iii) of para 18 of the said judgment as excess amounts were paid to the petitioner for more than 5 years right from 1992 to 2000, but as per the dictum of the Hon'ble Supreme Court, the respondents cannot recover such amounts from the petitioner. Therefore, the impugned Memo dated 10.05.2017 is liable to be set aside.

Accordingly, W.P.No.21269 of 2017 is allowed and the impugned Memo dated 10.05.2017 is set aside.

As far as W.P.No.31673 of 2018 is concerned, as the respondents are not releasing the pension and other retiral benefits to the petitioner only on the ground that the petitioner has filed W.P.No.21269 of 2017 challenging the Memo dated 10.05.2017, as the said writ petition is now allowed setting aside the Memo dated 10.05.2017, the respondents are directed to release the pension and other retiral benefits to the petitioner within a reasonable period of time, preferably within a period of Eight weeks from the date of receipt of a copy of this order. With these observations, W.P.No.31673 of 2018 is disposed of.

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

ABHINAND KUMAR SHAVILI, J

13th August, 2019

ajr