IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 442 of 2018
with
I.A. No. 7421 of 2018
with
I.A. No. 8104 of 2018

1.The State of Jharkhand through its Chief Secretary, Govt. of Jharkhand, Project Building, P.O. + P.S. – Dhurwa, Ranchi

2.The Chief Engineer, Department of Water Resources, P.O. + P.S. Hazaribag, Hazaribag.

3.The Executive Engineer, Mechanical Division, Irrigation, Konar Canal Division, Dumri, P.O. + P.S. Dumri, Giridih.

4.The Superintending Engineer, Irrigation Mechanical Circle, P.O. + P.S. Hazaribagh, Hazaribagh.

.... **Respondents-Appellants**

Versus

1.Abdul Qayum, S/o Abdul Halim, R/o Village Konar Canal Division, Dumai, P.O & P.S. Dumri, District – Giridih, permanent residing at Village/Mohallah Barah Pathar, Near Teentar, P.O & P.S. Dehari-on-sone, Dist. Rohtas (Bihar). ... **Writ Petitioner-Respondent**

2.The Accountant General (A & E), Jharkhand, P.O + P.S. – Doranda, Ranchi.

3.The District Accounts Officer, P.O & P.S. Doranda, Ranchi. ....**Respondents/Performa Respondents**

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Appellants : Mr. Amit Kumar, S.C. (Mines) II
For the Res No. 1 : Mr. Atanu Banerjee, Advocate
For the Res. No. 3 : Mr. Sudarshan Shrivastava, Advocate

Oral Judgment
Order No. 09 : Dated 15th December, 2020:

With consent of the parties, hearing of the matter was done through video conferencing and there was no complaint whatsoever regarding audio and visual quality.

I.A. No. 7421 of 2018

2. This Interlocutory Application has been filed for condoning the delay of 118 days, which has occurred in preferring this appeal.

3. Heard learned counsel appearing for the parties.

4. Having regard to the averments made in this application, we are of the view that the appellants were prevented by sufficient cause from preferring the appeal within the period of limitation.

5. Accordingly, I.A. No. 7421 of 2018 is allowed and delay of 118 days in preferring the appeal is condoned.

L.P.A. No. 442 of 2018

6. This intra-court appeal is preferred against the order/judgment dated 19.03.2018 passed by learned Single Judge in W.P. (S) No. 2658 of 2016, whereby and whereunder the orders passed by the authorities dated 28.01.2016, 14.01.2016 and 29.04.2016 have been quashed and set aside, by which, the pay-scale of the writ petitioner was revised and reduced w.e.f. 01.01.1996 in pursuance to letter dated 14.01.2016 issued by the office

of respondent-Accountant General (A & E), Jharkhand whereby respondents-State authorities were directed to make necessary correction in the pay-scale of the writ petitioner.

7. The brief facts of the case, which are required to be referred herein for proper adjudication of the *lis*, are as under:

The writ petitioner was appointed on the post of Drill Man vide Office Order No. 91 dated 31.12.1980 issued by the office of Superintending Engineer, Mechanical Division, Mithapur, Patna. After coming into effect of the Bihar Re-organization Act, 2000 and in pursuance to the decision of cadre division, the services of the writ petitioner was allocated to the State of Jharkhand and he was posted as Drill Man at Dumri, Giridih.

While working as such, the writ petitioner had approached to this Court in the year 2009 by filing writ petition, being W.P. (S) No. 5824 of 2009, for direction upon the respondents-authorities to grant revised pay-scale of Rs. 9300-34,800/- with Grade Pay of Rs. 4200/-, which was dismissed as withdrawn vide order dated 14.08.2013.

It is the case of the writ petitioner that he was not given any promotion during his service period till May,

2013, however, pay-scale of the writ petitioner was partially revised vide order dated 06.09.2013. Since the writ petitioner was to retire w.e.f. 31.01.2016, the respondents-authorities had sent the service book and pension papers of the writ petitioner to respondent-Accountant General (A & E), Jharkhand for necessary compliance but the same was returned to respondent no. 3-Executive Engineer, Dumri, Giridih (appellant no. 3 herein) with a direction as contained in letter dated 14.01.2016 for making necessary correction in the pay as the pay fixation done earlier was not correct.

The writ petitioner, being aggrieved with the aforesaid decision dated 14.01.2016 as also consequential orders dated 28.01.2016 and 29.04.2016, approached this Court by filing W.P. (S) No. 2658 of 2016, since according to the writ petitioner the pay-scale was decided to be revised and reduced w.e.f. 01.01.1996 on the basis of letter dated 14.01.2016 without providing opportunity of hearing to the writ petitioner, with a direction to recover the excess amount in one time or in installment from the amount of retiral benefits.

Before the writ Court, the writ petitioner had relied upon the judgments rendered in the case of ***Sahib Ram Vs. State of Haryana & Ors*** reported in ***1995 Suppl.***

(1) SCC 18 and ***State of Punjab & Ors Vs. Rafiq Masih (While Washer) & Ors*** reported in ***(2015) 4 SCC 334***.

The respondents-State of Jharkhand appeared before the writ Court and contested the case by filing counter affidavit stating, *inter alia*, that the writ petitioner was wrongly granted pay-scale of ITI Trained Drill Man, so the excess payment made to him is bound to be recovered and further the writ petitioner vide letter dated 07.10.2013 had also given declaration that if the pay-scale granted to him is found to be wrong or excess, in future, then the excess amount shall be liable to be recovered from the salary and pension of the writ petitioner, hence the State Government has taken decision for recovery of the excess amount and re-fixation of the pension, as per revised pay-scale.

The learned Single Judge, after appreciating the argument advanced on behalf of parties and on relying upon the judgments rendered by Hon'ble Apex Court in the case of ***State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (Supra)*** as also judgment rendered in the case of ***Kusheshwar Nath Pandey vs. State of Bihar & Ors*** reported in ***(2013) 12 SCC 580*** quashed the impugned orders dated 28.01.2016, 14.01.2016 and 29.04.2016. In consequence thereof, the amount already recovered was directed to be refunded to

the writ petitioner, and if any amount had not been recovered, the same was directed not to be recovered, in future, with a further direction to the respondents-authorities to fix the pension of the writ petitioner in the light of pay fixed earlier vide letter dated 06.09.2013, which is the subject matter of present intra-court appeal, preferred by the State of Jharkhand.

8. Mr. Amit Kumar, learned S.C. (Mines) II appearing for the appellants-State of Jharkhand has submitted that learned Single Judge is not right in quashing the impugned orders as admittedly herein the pay of the writ petitioner was wrongly fixed and hence, as per the undertaking given by the writ petitioner, the same was rightly directed to be recovered, but the aforesaid aspect of the matter has not been appreciated by the learned Single Judge.

According to learned counsel, the writ petitioner approached the writ Court mainly on the ground that before taking any adverse decision of recovery of the amount paid and the re-fixation of the pension, principles of natural justice had not been followed as he was not given opportunity of hearing before passing of impugned orders, even accepting that ground, the proper order to be passed by the learned Single Judge was to remit the matter before the authority to pass order afresh after

providing opportunity of hearing to the writ petitioner otherwise the writ petitioner will be paid the consequential benefits without its proper adjudication even if the writ petitioner is not entitled to get such amount.

9. This Court has heard learned counsel for the parties and appreciated the materials available on record as also gone through the finding recorded by learned Single Judge in the impugned order.

The undisputed fact herein is that the pay-scale of the writ petitioner was revised vide letter dated 06.09.2013 but the said fixation was found to be incorrect being contrary to the decision of the authority in pursuance to the decision as contained in letter dated 14.01.2016, which prompted the State-authorities to take decision by issuing the impugned order dated 28.01.2016, by which, the pay-scale of the writ petitioner was revised and reduced w.e.f. 01.01.1996 and in consequence thereof, the necessary correction of the pay-scale of the writ petitioner was directed to be made.

Aggrieved thereof, the writ petitioner has approached this Court by filing W.P. (S) No. 2658 of 2016 (subject matter of present intra-court appeal) by assailing the orders of revision and reduction of pay-scale w.e.f. -01.01.1996 on the ground that even though said revision

and reduction in the pay-scale leads to civil consequence but before taking such decision, the principles of natural justice has not been followed.

The learned Single Judge has appreciated the aforesaid argument and quashed the impugned order of revision and fixation of pay-scale as also the order of recovery, meaning thereby, two-fold directions have been passed by the writ Court; first pertains to the recovery of excessive amount and; second pertains to re-fixation of pay-scale as also the pension.

So far recovery part is concerned, learned Single Judge has relied upon the judgments rendered by Hon'ble Apex Court in the case of ***State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (supra)*** as also in the case of ***Kusheshwar Nath Pandey Vs. State of Bihar & Ors (supra)*** and quashed the order of recovery passed by the respondents-authorities.

10. Learned counsel for the appellants-State has submitted that said part of the order, whereby decision taken by the authority for recovery of the excess amount from the salary or pensionary benefit of the writ petitioner, has been quashed by learned Single Judge, is not sustainable in the eyes of law, as the writ petitioner had given undertaking to the effect that in case of any excess payment, if made, the same may be recovered and,

therefore, in view of the said undertaking the order of recovery having been quashed by the learned Single Judge, cannot be said to be justified.

In support of his argument, he has relied upon the judgment rendered by Hon'ble Apex Court in the case of ***High Court of Punjab & Haryana & Ors Vs. Jagdev Singh*** reported in ***(2016) 14 SCC 267***.

So far as wrong fixation of pay-scale is concerned, it has been submitted that only for non-observance of principles of natural justice, no benefit can be extended to the writ petitioner rather the matter ought to have been remitted before the authority for taking decision afresh after providing opportunity of hearing.

11. While, on the other hand, Mr. Atanu Banerjee, learned counsel for the writ petitioner, respondent no. 1 herein, has submitted that no error has been committed by learned Single Judge, by interfering with the decision of the State for recovery of the amount by applying the ratio laid down in the case of ***State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (supra)*** in the facts and circumstances of the instant case since the writ petitioner was a Drill Man, a Class IV employee, as also in quashing the order of re-fixation of pay since before revision and reduction in pay-scale the principles of natural justice had not been followed.

12. We have appreciated the argument advanced on the aforesaid issue and deem it fit and proper first to scrutinize as to whether the judgment rendered in the case of ***Sahib Ram Vs. State of Haryana & Ors (Supra)*** and ***State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (supra)*** will be applicable in the facts and circumstances of the present case.

Further, this Court has also to scrutinize the applicability of judgment rendered by Hon'ble Apex Court in the case of ***High Court of Punjab & Haryana & Ors Vs. Jagdev Singh (supra)*** in the facts and circumstances of the present case.

13. The question of recovery of excess amount paid to the concerned employee fell for consideration in the case of ***Shyam Babu Verma & Ors Vs. Union of India & Ors*** reported in ***(1994) 2 SCC 521***, in which, it was held that it shall only be just and proper not to recover any excess amount already paid to the petitioner due to no fault of theirs.

The Hon'ble Apex Court in the case of ***Sahib Ram Vs. State of Haryana & Ors (Supra)***, has pleased to lay down that in case of no misrepresentation/concealment of any fact there will be no recovery from the retired employee.

However, the Hon'ble Apex Court in the case of ***Syed Abdul Qadir & Ors vs. State of Bihar & Ors*** reported in ***(2009) 3 SCC 475*** while dealing with the issue of recovery of excess amount rejected the view, as has been laid down in the case of ***Shyam Babu Verma & Ors Vs. Union of India & Ors (supra)*** and ***Sahib Ram Vs. State of Haryana & Ors (Supra).***

The issue about recovery on the ground of misrepresentation has again been answered in the case of ***Chandi Prasad Uniyal & Ors Vs. State of Uttrakhand & Ors*** reported in ***(2012) 8 SCC 417*** taking a divergent view to the judgment rendered in the case of ***Sahib Ram Vs. State of Haryana & Ors (Supra)*** and as such considering the divergent view on the issue, the matter was referred before the Larger Bench in the case of ***Rakesh Kumar vs. State of Haryana & Ors*** reported in ***(2014) 8 SCC 892*** (with other analogous cases). The order of reference reads as under:

> "*In view of an apparent difference of views expressed on the one hand in Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] and Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] ; and on the other hand in Chandi Prasad Uniyal v. State of Uttarakhand [(2012) 8 SCC 417 : (2012) 4 SCC (Civ) 450] , we are of the view that the remaining special leave petitions should be placed before a Bench of three Judges. The Registry is accordingly directed to place the file of the remaining special leave petitions before*

the Hon'ble the Chief Justice of India for taking instructions for the constitution of a Bench of three Judges, to adjudicate upon the present controversy."

The aforesaid reference was answered by the Bench of three Judges on 08.07.2014. While disposing of the reference, the three-Judges Bench recorded the following observations at paragraph 7, which reads as under:

"7.In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra-ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice."

Having recorded the above observations, the reference was answered at paragraph 12 and the matter was sent back before the Division Bench for disposal. The relevant paragraphs 12 and 13 of the judgment read as under:

"***12****.Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.*

13*. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for its appropriate disposal."*

Thereafter, the issue was decided by the Hon'ble Division Bench of Hon'ble Apex Court in the case of ***State***

of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (supra), as would be evident from paragraph 18 of the judgment, which reads 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 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."*

It is evident from paragraph 18 of the judgment that few situations have been provided wherein recovery by the employees would be permissible mainly under the situations; (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.

14. Before going to the facts of the case, it requires to refer the judgment rendered in the case of ***High Court of Punjab & Haryana & Ors Vs. Jagdev Singh (supra)*** wherein the fact lead to the effect that the respondent-officer was appointed as a Civil Judge (Junior Division) on 16th July, 1987 and was promoted as Additional Civil Judge on 28th August, 1997 in the judicial service of the State. By Notification dated 28th September, 2001, a pay scale of Rs 10,000-325-15,200 (senior scale) was allowed under the Haryana Civil Service (Judicial Branch) and

Haryana Superior Judicial Service Revised Pay Rules, 2001. Under the Rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise. The respondent-officer had furnished in pursuance to the aforesaid rule while granting the reduced pay-scale and selection grade. In the meantime, the Court in Civil Writ (C) No. 1022 of 1989 accepted the recommendations of the First National Judicial Pay Commission (Shetty Commission). Thereupon, the Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2003 were notified on 7th May, 2003. In view thereof, the pay-scales of judicial officers in Haryana were once again revised with effect from 1st January, 1996. An exercise was undertaken for adjustment of excess payments made to judicial officers, following the notification of the revised pay rules. On 18th February, 2004, a letter for the recovery of an amount of Rs 1,22,003/- was served upon the respondent-officer pursuant to the direction of the Registrar of the High Court. The respondent-officer challenged the action for recovery in writ proceedings under Article 226 of the Constitution of India. The petition was allowed by the impugned judgment of the

High Court. The High Court found substance in the grievance of the respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part. The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him.

The Hon'ble Apex Court in the case of ***High Court of Punjab & Haryana & Ors Vs. Jagdev Singh (supra)*** by taking note of paragraph 18 of the judgment rendered in the case of ***State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (supra)*** at paragraph 11 held as under:

> ***"11.****The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."*

The learned counsel for the appellants-State relying upon the judgment rendered in the case of ***High Court of***

Punjab & Haryana & Ors Vs. Jagdev Singh (supra) took plea that the writ petitioner had also furnished an undertaking as would appear from the documents available on record.

However, it is settled proposition of law that the applicability of the judgment depends upon the facts and circumstances of each and every case and there cannot be any universal application of the judgment, as has been held in the case of ***Dr. Subramanian Swamy vs. State of Tamil Nadu & Ors*** reported in ***(2014) 5 SCC 75***, in particular at paragraph 47, which reads as under:

> *"**47.**It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. "The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed."*

The fact in the case of ***High Court of Punjab & Haryana & Ors Vs. Jagdev Singh (supra)*** pertains to Civil Judge (Junior Division) who was promoted as Additional Civil Judge on 28-8-1997 in the judicial service of the State and vide Notification dated 28-9-2001, a pay scale of Rs 10,000-325-15,200 (senior scale) was allowed under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001 (in short 'Rules, 2001'), under which,

each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise. In the aforesaid case, an undertaking was given by the respondent-employee and in that pretext the applicability of the judgment rendered in the case of ***State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (supra)*** the proposition laid down at paragraph 18 thereof has been discussed by holding that the proposition no. (ii) to the effect that recovery from the retired employees or employees, who are due to retire within one year of the order of recovery, will not be applicable in case of undertaking furnished by any public servant covered under the provisions of Rules, 2001. But, herein it has fairly been submitted by learned counsel for the appellants in course of argument at Bar that there is no such Rule to that effect.

On the question of undertaking, we have considered the office order dated 06.09.2013 wherein at paragraph 3, it has specifically been stipulated that in case of any error/discrepancy in fixation of pay-scale, the same will be adjusted and it will not be subject to adjudication by any Court.

We have also considered the letter written by the writ petitioner dated 07.10.2013, wherein it has been

written by the writ petitioner making a request for payment of rest of the amount within a certificate that if any amount in pursuance to the payment of arrears would be found to be excess, the same may be adjusted from the salary or recovered from the pensionary benefit.

It is a fact that letter dated 07.10.2013 was written by the writ petitioner but the question is that whether that letter can be said to be an undertaking warranting the judgment rendered in the case of ***High Court of Punjab & Haryana & Ors Vs. Jagdev Singh (supra)*** applicable, we are of the considered view that the reference of undertaking as has been observed by Hon'ble Apex Court in the case of ***High Court of Punjab & Haryana & Ors Vs. Jagdev Singh (supra)*** is in terms of the requirement of furnishing undertaking as per Rules, 2001 stipulating the requirement of furnishing undertaking for recovery in case of excess payment.

In the case in hand, admittedly there was no Rule to that effect and as such in absence of any Rule, the letter written by the writ petitioner dated 07.10.2013 cannot be said to be undertaking in the eyes of law.

We have considered the fact of the case as also applicability of proposition (i) and (ii) as mentioned at paragraph 18 of the judgment rendered in the case of

State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (supra) .

Herein the writ petitioner was retired from services while working as Drill Man, a Class IV post in the year 2016 and as has been held in the case of ***State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (supra)*** holding therein impermissibility in law from making recovery from Class IV and Class III services and as such the writ petitioner falling under Class IV employee (Group D) as also retired from services and thereafter the order of recovery was passed, in that view of the matter, as per the judgment rendered in the case of ***State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (supra)***, there cannot be any recovery from the salary or pensionary benefit of the employee.

As such, in the facts and circumstances discussed herein above, the judgment rendered in the case of ***High Court of Punjab & Haryana & Ors Vs. Jagdev Singh (supra)*** will not be applicable, for the reason that there is no undertaking in the eyes of law furnished by the writ petitioner as also the petitioner in the case of ***High Court of Punjab & Haryana & Ors Vs. Jagdev Singh (supra)*** was as judicial officer, but herein the writ petitioner is a class IV employee and already retired from services in the year 2016.

Hence, part of impugned order passed by the learned Single Judge which pertains to quashing of order pertaining to recovery, suffers from no infirmity.

15. So far as another part, which pertains to wrong fixation of pay-scale, is concerned, based upon which the pensionary benefit is also to be revised, admittedly herein before re-fixation of pay-scale the writ petitioner was not provided opportunity of hearing. The revision or reduction in pay-scale amounts to civil consequence and, therefore, before taking any adverse decision adherence of principles of natural justice is *sine qua non*.

The learned Single Judge after taking into consideration these aspects of the matter though has quashed and set aside the impugned order, but the question herein is that whether on technical ground any person can be given advantage, that aspect of the matter has not been considered by the learned Single Judge, in view of the fact that the appellant-State had submitted that the pay-scale of the writ petitioner has wrongly been fixed, as such proper course for the Court would have been to remit the matter before the competent authority to take decision afresh after providing opportunity of hearing to the aggrieved i.e. writ petitioner herein.

It is for the reason that if any dispute has been raised, the same requires adjudication and adjudication

means hearing the party against whom the order is to be passed and thereafter a reasoned order is required to be passed but if any direction would be passed for payment of pensionary benefit on the basis of pre-revised pay-scale without adjudication, the same would not be proper as because if it is found that the writ petitioner is not entitled for the pay-scale which he is claiming and if amount would be directed to be paid the same will be nothing but perpetuating the illegality and it is settled proposition of law that illegality cannot be allowed to be perpetuated and if illegality came to knowledge of the authority, same is required to be rectified.

Reference in this regard be made to the judgment rendered in the case of ***Chaman Lal Vs. State of Punjab and Ors*** as reported in ***AIR 2014 SC* 3640**, wherein the Hon'ble Apex Court taking reference of the case rendered in the case of ***Basawraj & Anr. Vs. Special Land Acquisitioin Officer*** **[** ***(2013) 14 SCC 81*** **]** at paragraph 16, held as under:

> *"**16.** More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in Basawaraj v. Land Acquisition Officer [Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81 : AIR 2014 SC 746] considered this issue and held as under: (SCC p. 85, para 8)*

> *"8.It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745] , Anand Buttons Ltd. v. State of Haryana [Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164] , K.K. Bhalla v. State of M.P. [K.K. Bhalla v. State of M.P., (2006) 3 SCC 581] and Fuljit Kaur v. State of Punjab [Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455] .)"*

16. This Court, in view of the aforesaid legal proposition, is of the view that the learned Single Judge is not right in holding the writ petitioner to get pension on the basis of pay-scale fixed vide order dated 06.09.2013, instead of directing the State-authorities for passing fresh

order, after providing opportunity of hearing to the writ petitioner.

Therefore, we are of the view that part of the order whereby and whereunder the writ Court has directed fixation of pay-scale, on the basis of order dated 06.09.2013, is not sustainable in the eyes of law.

Accordingly, that part of the order is quashed and set aside.

17. In the result, the competent authorities of the State-appellant is directed to decide the matter afresh, on the issue of fixation of pay-scale fixed vide order dated 06.09.2013, after providing opportunity of hearing to the writ petitioner and by passing speaking order.

The said exercise shall be completed within a period of three months from the date of receipt/production of copy of this order.

Needless to say that in case any positive decision is taken in favour of the writ petitioner, the consequential benefit shall be granted in favour of writ petitioner within a period of eight weeks from the date of receipt of copy of this order. However, in case any adverse decision is taken, the same be communicated to the writ petitioner within the aforesaid period.

18. With the aforesaid observations and directions, the instant intra-court appeal stands disposed of.

19. In view of the disposal of the instant intra-court appeal, I.A. No. 8104 of 2018 stands disposed of.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Alankar/ -
A.F.R