

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 14th March, 2023*

+ W.P.(C) 11167/2018

D. C. MURMU Petitioner

Through: Mr. S.C. Soren, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Vikram Jetly, Central
Government Standing Counsel with
Ms. Shreya Jetly, Advocate for R-1.

Mr. R.V. Sinha and Mr. A.S. Singh,
Advocates for R-2 and 3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

“(a) to issue order in the nature of Mandamus to the Respondents to refund the amount of Rupees 20,964/- the illegal and impermissible recovery from the pension/Gratuity of retired class IV/III employee, recovered on the plea of excess payment of pension after revision of pay under 7th pay Commission Recommendation where:-

Hon'ble Supreme Court of India in the matter of State of Punjab and other Vs Rafiq Masih and others (2015 (4) SCC 334) Ruled.

"That the recovery is impermissible of any short, even if payment is made by mistake or wrongly to Class IV or Class III employee who is due for retirement within one year or retired from service" (2015 (4) SCC 334)

And

(b) Hon'ble High Court of Delhi may issue direction in the nature of mandamus to Respondents for issuing Revised and amended P.P.O. (pension payment order) No. 483 of Durga Charan Murmu, to the petitioner effecting the revision of pension under up gradation of scale under order of dated 06-10-2016 and 7th pay commission Recommendation.”

2. Facts to the extent necessary and as averred in the writ petition are that the Petitioner superannuated from the service of Security Printing and Minting Corporation India Ltd. ('SPMCIL')/Respondent No.2 on 31.03.2016 and his pension was fixed at Rs.14,338/- per month w.e.f. 01.04.2016, as per 6th CPC. The pension was subsequently revised based on the pay revisions under 7th CPC and Petitioner was granted revised basic pension at Rs.20,800/- per month vide letter dated 01.08.2017. Petitioner was granted retirement Gratuity after adjusting Rs.1,02,768/- and difference of commutation value of pension of Rs.5,23,891/-. After fixation of pension under 6th CPC, there was upgradation of pay scale on 06.10.2016 under promotion policy of SPMCIL, from Grade Pay of Rs.2400/- to Rs.2800/-. Present petition has been filed by the Petitioner *inter-alia* assailing the impugned order dated 01.08.2017, whereby recovery of an amount of Rs.20,964/- was effected from the retiral benefits of the Petitioner on account of alleged excess payment of pension while implementing 7th CPC recommendations.

3. Contention of the counsel for the Petitioner is that the impugned action of recovery by SPMCIL is against the settled position of law that no recovery shall be made from retired employees as pension is not the bounty of the State. Reliance is placed on the judgment of the Supreme Court in *State of Punjab And Others v. Rafiq Masih (White Washer) And Others*, (2015) 4 SCC 334; *State of Jharkhand and Others v. Jitendra Kumar Srivastava and Another*, (2013) 12 SCC 210 and *Deokinandan Prasad v. State of Bihar and Others*, (1971) 2 SCC 330.

4. *Per contra*, stand of the Respondents in the counter affidavit is that the Petitioner retired on superannuation on 31.03.2016 from India Government Mint, Noida and his pension was fixed in PB-1 with

Grade Pay of Rs.2400/- under 6th CPC. Post his retirement, he was granted higher Grade Pay of Rs.2800/- w.e.f. 08.12.2015 as per notified Promotion Policy of SPMCIL and his pay was further revised under 7th CPC w.e.f. 01.01.2016. This led to a revision in his retirement benefits.

5. It is sought to be explained by counsel appearing on behalf of Respondents No. 2 and 3 that deduction of Rs.20,964/- vide the impugned order, was made from the Gratuity arrears of 7th CPC due to retrospective implementation of the recommendations, w.e.f. 01.01.2016. Petitioner had drawn his pension during the period 01.04.2016 to 30.06.2017 under 6th CPC in which Dearness Allowance was on the higher side whereas under 7th CPC Basic Pay and Dearness Allowance were merged and 40% of revised basic pension was commuted. On account of commutation of Petitioner's basic pension, pension due (residual pension plus Dearness relief) was lower than the pension drawn in the aforesaid period. Hence, the recovery is justified as it is not on account of the fault of the Respondents but due to revision of pension and retrospective implementation of 7th CPC.

6. I have heard learned counsel for the Petitioner and learned counsels for the Respondents. Short issue that arises for consideration before this Court is whether the amount of Rs.20,964/- can be recovered from the pension of the Petitioner.

7. Stand of the Petitioner is that firstly, the recovery is not at all justified on merits and secondly and more importantly, no recovery can be made from the pensionary benefits in view of several judgements of the Supreme Court on this issue. SPMCIL takes a position that retrospective application of 7th CPC after a period of over one year resulted in the Petitioner drawing higher Dearness Allowance

under 6th CPC for the said period and the differential amount was thus recoverable.

8. Insofar as issue of recovery from a pensioner is concerned, the law is no longer *res integra*. The Supreme Court in **Rafiq Masih (supra)** while dealing with the issue of recovery culled out various situations where the benefits granted to the employees ‘cannot’ be recovered by the employer and for ready reference these are:-

“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.”

9. Recently, the Supreme Court in **Thomas Daniel v. State of Kerala & Ors., 2022 SCC OnLine SC 536**, decided an appeal wherein the issue was whether increments granted to the Appellant, while in service, could be recovered almost 10 years after his retirement on the ground that they were granted on account of an ‘error’. The Supreme Court held as under:-

“9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular

interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

10. *In Sahib Ram v. State of Haryana this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees. It was held thus:*

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

11. *In Col. B.J. Akkara (Retd.) v. Government of India this Court considered an identical question as under:*

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."

12. In Syed Abdul Qadir v. State of Bihar excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The

court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

13. *In State of Punjab v. Rafiq Masih (White Washer) wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:*

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.....”

10. A Division Bench of this Court in *Dilbagh Singh Bains v. Delhi Development Authority and Others*, 2023 SCC OnLine Del 1404, had the occasion of considering the issue of recovery in a case where the Petitioner had challenged recovery from his retiral benefits and had sought a refund of the amount recovered. The stand of the Respondents was that 2nd ACP benefit was wrongly granted to the Petitioner on 23.07.2005 instead of his entitlement from 14.06.2007 and this also had a cascading effect on grant of 3rd MACP from an earlier date, resulting in excess payment to the Petitioner. According to the Respondents therein, the error came to their notice at the time of pre-audit of pension and terminal benefits, whereafter the recovery was effected. Relying on the judgment of the Supreme Court in *Rafiq Masih (supra)*, the Division Bench set aside the recovery made from the retiral dues of the Petitioner with a direction to refund the amount with interest @ 5% per annum computed from the date of recovery till the date of refund, on the ground that law did not permit recovery from pension, even if there was over-payment.

11. Applying the principles culled out by the Supreme Court and the observations of the Division Bench, as aforementioned, this Court finds merit in the submission of the Petitioner that even assuming the amount was erroneously paid to the Petitioner, the same cannot be recovered from his pension. It is not the case of SPMCIL that Petitioner was in manner responsible for the alleged over-payment by misrepresenting or playing fraud.

12. Accordingly, the impugned order dated 01.08.2017 is set aside and it is held that the impugned action of recovery of Rs.20,964/- is illegal and against the law propounded by the Supreme Court. Respondent No. 2 is accordingly directed to refund the amount of Rs.20,964/- to the Petitioner within a period of three weeks from today

along with interest @ 6% per annum, computed from the date of recovery till the date of actual payment. If any payments remain outstanding to the Petitioner towards arrears on account of re-fixation of revised pension, due to pendency of the issue pertaining to the recovery, same shall also be released within six weeks.

13. This Court cannot help but notice that for an amount of Rs.20,964/-, Petitioner has been made to run from pillar to post from 17.10.2017, when he sent a legal notice, to the filing of an original application being O.A. No. 1795/2018 before the Central Administrative Tribunal, which was withdrawn as not maintainable and finally, the present writ petition which was filed in October, 2018. Even in this Court, Petitioner has been prosecuting the petition for the last 5 years and SPMCIL has been contesting the case. Accordingly, the writ petition is allowed with cost of Rs.20,000/- payable to the Petitioner along with the refund, as directed above.

14. Writ petition is accordingly disposed of.

JYOTI SINGH, J

MARCH 14, 2023/rk/shivam