

Learned counsel for the petitioner submits that despite interim order dated 20.09.1999, the recovery was done from the petitioner(s), which is arbitrary and illegal hence, the recovery which has been done from the petitioners is liable to be refunded to the petitioner(s) keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195 as well as in Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022.***

Learned counsel for the respondents submits that upon re-fixation of the salary of the petitioner(s) w.e.f 01.01.1986, only notional benefits were allowed for the period from the year 1986 to 1989 however, the arrears were wrongly paid to the petitioner(s) beyond their entitlement hence, the same have rightly been recovered from the petitioners while they were in service.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

The question of law with regard to the recovery from a retired employee has already been settled by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***, according to which, no recovery can be done from a class 3 and class 4 employee and that too after the retirement. Further, as per the judgment in ***Rafiq Masih's case (supra)***, no recovery can be done after withdrawing a benefit which an employee continue to get for a period of five years before the same was withdrawn. The relevant paragraph of the said judgment is as under:-

“12. 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.”*

In the present case, the payment was made to the petitioner(s) in the year 1989 whereas, the same was withdrawn after a period of 10 years in the year 1999. Nothing has come on record that the petitioner(s) manipulated or misrepresented in any manner to get the said arrears. Once, the arrears were paid 10 years ago, no recovery could have been done keeping in view the judgement of the Hon’ble Supreme Court of India in ***Rafiq Masih’s case*** (*supra*).

Apart from this, as per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022***, where there is no misrepresentation on behalf of an employee so as to receive emoluments beyond his/her entitlement, the recovery cannot be done from employee concerned. The relevant paragraph of the said judgment is 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.”

Keeping in view the above, the recovery of the excess amount which has been done from the petitioners despite there being interim order is not only contemptuous but is contrary to the settled principle of law. Hence,

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the amount recovered from the petitioners be refunded back to them within a period of 8 weeks from the receipt of copy of this order.

The present set of two writ petitions are allowed in above terms.

Pending application, if any, also stands disposed of.

Photocopy of this order be placed on the file of other connected case.

03-12-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO