

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 13911 of 2017

**Ashok Tripathy
-Vs-
Union of India & Ors.**

For the Petitioner	: Mr. Ujjal Ray
For the Respondent No.1	: Mr. Madhu Jana
For the Respondent Nos.2 to 3	: Mr. Arijit Bakshi Mr. Soumya Mukherjee
Judgment on	: 06.02.2026

Ananya Bandyopadhyay, J.:-

1. The petitioner, who had joined service as a Hindi translator on 11th July, 1990 in the pay scale of Rs.1400-2300/-, asserted that his entire service career had been marked by honesty, diligence and satisfaction of the superior authorities. While discharging his duties, he was rewarded a personal upgradation with effect from 20th March, 1991, vide Office Order dated 25th August, 1998.
2. After about 14 months, the respondents issued another Office Order dated 2nd November, 1999, purporting to cancel the earlier upgradation. The petitioner promptly challenged the cancellation in W.P. No.105 of 2000, whereupon the Hon'ble High Court, by Order dated 14th January 2000, quashed the cancellation and directed the authorities to act in accordance with law. Pursuant thereto, the petitioner was duly extended

the first Assured Career Progression Scheme (ACPS) benefit on 11th July, 2002 after completion of 12 years of service.

3. The petitioner's pay was thereafter re-fixed in accordance with the recommendations of the Fifth and Sixth Central Pay Commissions. His Pay Scale moved from Rs.6,500-10,500/- and subsequently to PB-2 Rs.9,300-34,800/- with Grade Pay of Rs.5,400/-, the fixation being finalised by Office Order dated 6th April, 2010.

4. Seventeen years after the earlier quashment and long after all benefits had crystallised, the petitioner was suddenly served with an Office Order/Show-Cause Notice dated 3rd May, 2017, alleging incorrect grant of upgradation and pay fixation and calling for recovery of alleged excess payment. The petitioner contended that:

- i. The notice was issued without any reason, opportunity, or basis;
- ii. The Director, Indian Museum had already pre-decided the issue, reducing the notice to a mere ritual;
- iii. The Authorities failed to appreciate that the ACP Scheme was introduced only in 1999 and his first benefit under the scheme was granted strictly after completion of 12 years of service on 11th July, 2002;
- iv. Benefits granted and acted upon for 15 to 19 years cannot be withdrawn in law, particularly in the absence of any misrepresentation;
- v. Recovery of alleged excess payment is barred by Department of Personnel and Training vide its Office Memorandum dated 6th February, 2014 and the Supreme Court decisions in *State of*

Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334 and *Thomas Daniel Vs. State of Kerala & Ors.* reported in 2022 SCC Online SC 536.

5. The respondents' belated action is vitiated by arbitrariness, delay, laches and violation of natural justice and constitutes an impermissible attempt to reopen settled issues which had attained finality by High Court's earlier Order of 2000.
6. The petitioner asserted all financial upgradation, pay fixations and ACP benefits were lawfully granted, consistently acted upon by the employer and even justified by the respondents' own communications including the Director's letter dated 12th September, 2011. The petitioner, having retired in May 2023, submits that any recovery after such prolonged delay is manifestly unjust and unsustainable in law.
7. The Learned Advocate representing the petitioner advanced the following submissions:
 - i. The impugned show-cause notice was challenged to be unsustainable in law. The official order/show-cause notice dated 03.05.2017 declaring the petitioner's financial upgradation and pay fixation to be incorrect, was despotic and untenable, having being issued without reasons and without extending any opportunity of hearing. The notice reflected a decision already taken by the Director, thereby rendering the process, a mere formality evidencing, non-application of mind.
 - ii. Attempt to re-agitate, settled issues after 17 to 19 years should not be entertained. The first personal upgradation granted in 1998,

effective from 1991 had already been adjudicated when its cancellation was quashed by the Hon'ble High Court on 14.01.2000

- iii. The respondents, by issuing the present notice, sought to circumvent a prior judicial finding, reopen matters long settled, and barred by laches.
- iv. The petitioner never received the benefit twice in the first 12 years as alleged. He was granted his first ACP on 11.07.2002, after completion of 12 years of service strictly in compliance with the scheme introduced only in 1999.
- v. The pay scales of Rs.6,500-10,500/- and subsequent fixation under the Fifth and Sixth CPC, were correctly awarded.
- vi. The Director's letter dated 12.09.2011 explicitly recognised these upgradations as *de facto* promotions, demonstrating that the employer itself had earlier justified and validated, the petitioner's pay structure.
- vii. The attempt to withdraw or rectify benefits granted and acted upon for 15 to 19 years was barred by law, particularly, when the petitioner committed no misrepresentation.
- viii. The respondents' prolonged inaction constituted gross administrative indolence and rendered the subsequent action capricious.
- ix. Recovery of excess payment after such prolonged delay was contrary to DOPT OM dated 06.02.2014 and the binding precedent in Rafiq Masih (supra) and Thomas Daniel (supra).

- x. The petitioner retired in May 2023; recovery in such circumstances would be legally forbidden and manifestly unjust.
 - xi. The tenor of the impugned notice and the contemporaneous conduct of the Director revealed the respondent had prejudged the issue, whereby issuance of notice was superficial.
 - xii. The reopening of identical issues earlier quashed by this Court also demonstrated an excess of jurisdiction.
8. The Learned Advocate representing the respondents opposing the repetition contended the petition was devoid of merit and liable to be dismissed for reasons, rooted in law, administrative propriety, and settled constitutional principles.
9. Reliefs sought by the petitioner were misconceived as it was urged that none of the prayers in the writ petition could be sustained as the petitioner possessed no enforceable legal right nor did the respondents owe any statutory duty to maintain evidently wrongful pay fixation.
10. The Learned Advocate representing the respondents meticulously traced the chronology from 1990 to 2023, demonstrating as follows:-
- i. The petitioner's post of Hindi Translator was an isolated post with no promotional avenues.
 - ii. The Government of India by letter dated 16.07.1998 explicitly prohibited creation of new post or upgrading of existing posts without approval, binding upon the Indian Museum.
 - iii. Despite this bar, the petitioner was wrongfully granted personal upgradation from Rs.4,500-7,000/- Rs.5,500-9,000/- (Revised Slab S-10) on 25.08.1998 without mandatory approval.

- iv. This illegality was identified in the Finance Committee meeting of 25.06.1999 and led to the cancellation of the upgradation on 02.11.1999
 - v. The cancellation was set aside by the High Court on 14.01.2000 for want of reasoning, liberty being expressly granted to pass a fresh reasoned order, which the respondent asserted to have been precisely adhered to.
 - vi. Subsequent pay revisions under the Fifth and Sixth CPC resulted in the petitioner receiving even higher scales and grade pay to which he was never entitled, compounding the cumulative errors.
11. The Learned Advocate representing the respondents argued that the entire service history of the petitioner reflected a continuous chain of mistakes, each building upon the last and all granted, contrary to governing rules.
12. It was strongly argued that, mistake on the part of the administrative authority did not enure enforceable right in favour of the petitioner. Wrongful benefits, even if continued for years, do not crystallise into a vested right. The upgradation granted during the petitioner's probation (effective from 28.03.1991) was unlawful, being in breach of explicit Government prohibition. The petitioner cannot claim payment or seniority on the basis of an upgradation that was *void ab initio*. The law does not permit public authorities to perpetuate an illegality merely because it has been continuing for long. Mistake cannot be allowed to perpetuate mandatory duty to rectify.

13. It was further submitted the “principle that a mistake once detected must be rectified” is well entrenched.
14. The erroneous benefits were correctly identified in 1999 again during implementation of 5th CPC (1996), once more in the ACP grant of 2004, and finally during the 6th CPC pay fixation in 2010.
15. Each time the petitioner was wrongfully upgraded, moving into grades, far beyond the permissible levels of his isolated post.
16. As per successive Government of India circular including the DOPT OMS dated 06.02.2014, 02.03.2016 and 18.03.2015, immediate corrective action was mandatory in all cases of wrongful pay fixation or excess entitlements. It was emphasised that the respondents acted strictly in conformity with these directives, culminating in issuance of the show-cause notice dated 03.05.2017 and the Office Order dated 01.08.2017.
17. The show-cause notice was proper, reasoned and within jurisdiction. It was contended that the show-cause notice dated 03.05.2017 was issued lawfully, pursuant to the directions of the Government of India mandating correction of excess entitlements.
18. The notice was not pre-judged; rather it was initiated almost six years prior to the petitioner’s retirement, providing ample opportunity for representation.
19. The respondents were well within jurisdiction in reopening the matter, as the earlier question of 2000 was not on merit, but only for want of reasons.
20. Petitioner had no enforceable right in mandamus. It was argued that the writ of mandamus lay only when there exist a corresponding legal right

and statutory duty. The petitioner possessed no right to any upgradation, much less to successive higher scales granted without approval or eligibility.

21. There is no provision of law, compelling the respondent to continue payment of benefits that have been manifestly illegal from inception.
22. It was contended the protection under *State of Punjab & Ors. Vs. Rafiq Masih (supra)* did not apply to cases where the employee was never entitled to the benefit.
23. The petitioner had been granted upgradation, even during probation and multiple higher grade pay fixations without legal sanction; hence, Rafiq Masih's equitable protection is unavailable.
24. Instead, the respondent relied upon *Municipal Corporation of Greater Mumbai Vs. Rafiqunnisa M. Khalifa [(2019) 5 SCC 119]*, where recovery of wrongly paid benefits was held lawful.
25. The respondent acted in public interest and administrative necessity. The Indian Museum was duty bound to rectify long-standing irregularities affecting public funds.
26. The petitioner's benefits were resultant of cumulative mistakes of the respondents, not earned advancements.
27. The 2017 rectification process was initiated bona fide in compliance with binding of circulars and well before the petitioner's superannuation on 31.05.2023.
28. Accordingly, the Learned Advocate representing the respondents prayed for dismissal of the writ petition, expressing the actions of the

respondents were legal, justified and mandated by the principles governing correction of wrongful pay fixation in public service.

29. In **State of Punjab and Ors. v. Rafiq Masih (White Washer) and Ors.**¹, the Hon'ble Supreme Court held as follows:-

“14. In this context, reference may also be made to the decision rendered by this Court in Shyam Babu Verma v. Union of India [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , wherein this Court observed as under : (SCC pp. 525-26, para 11)

“11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1-1-1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1-1-1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.”

It is apparent, that in Shyam Babu Verma case [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , the higher pay scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984 i.e. after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.

¹ (2015) 4 SCC 334

15. *Examining a similar proposition, this Court in B.J. Akkara v. Govt. of India [B.J. Akkara v. Govt. of India, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] observed as under : (SCC pp. 728-29, para 28)*

“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.”

(emphasis supplied)

A perusal of the aforesaid observations made by this Court in B.J. Akkara case [B.J. Akkara v. Govt. of India, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from the employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the

reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e. Class III and Class IV—sometimes denoted as Group C and Group D) of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

16. *This Court in Syed Abdul Qadir v. State of Bihar [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] held as follows : (SCC pp. 491-92, para 59)*

“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. The 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.”

(emphasis supplied)

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which

would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir case [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744], that recovery of excess payments, made from the employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation.

17. Last of all, reference may be made to the decision in Sahib Ram v. Union of India [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] wherein it was concluded as under : (SCC pp. 19-20, paras 4-5)

“4. Mr Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a

Librarian working in the colleges to Rs.700-1600/- but they insisted upon the minimum educational qualification of first or second class MA, MSc, MCom plus a first or second class BLib Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

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.”

(emphasis supplied)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs 700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class MA, MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification). For those Librarians appointed prior to 3-12-1972, the educational qualifications were relaxed. In Sahib Ram case [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the

prescribed educational qualifications, even though the appellants concerned were ineligible for the same. The appellants concerned were held not eligible for the higher scale, by applying the principle of “equal pay for equal work”. This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

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.”

30. In **Thomas Daniel v. State of Kerala and Ors.**², the Hon'ble Supreme Court observed as follows:-

“11. In Col. B.J. Akkara (Retd.) v. Government of India² 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*

² 2022 SCC OnLine SC 536

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 Bihar³ 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)⁴ 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.

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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.”

31. In **State of Bihar and Ors. v. Pandey Jagdishwar Prasad and Ors.**³, the Hon'ble Supreme Court held as follows:-

“23. Without going into the question whether the appellant was justified after completion of two years from the actual date of retirement to deduct two years' salary and other emoluments paid to the respondent, we may say that since the respondent had worked during that period without raising any objection from the side of the appellant and the appellant had got works done by the respondent, we do not think that it was proper at this stage to allow deduction from his retiral benefits, the amount received by him as salary, after his actual date of retirement.

24. Considering the fact that there was no allegation of misrepresentation or fraud, which could be attributed to the respondent and considering the fact that the appellant had allowed the respondent to work and got works done by him and paid salary, it would be unfair at this stage to deduct the said amount of salary paid to him. Accordingly, we are in agreement with the Division Bench decision that since the respondent was allowed to work and was paid salary for his work during the period of two years after his actual date of retirement without raising any objection whatsoever, no deduction could be made for that period from the retiral dues of the respondent.

25. In Kailash Singh v. State of Bihar [(2005) 13 SCC 576 : 2006 SCC (L&S) 1494 : (2004) 1 PLJR 289] this Court observed that the employer State would not be entitled to recover the salary paid in excess after the due date of superannuation. In our view, this decision was practically based on the concession made by the State before this Court.”

32. In **State of Karnataka and Anr. v. Mangalore University Non-Teaching Employees' Association and Ors.**⁴, the Hon'ble Supreme Court held as follows:-

³ (2009) 3 SCC 117

⁴ (2002) 3 SCC 302

“11. The only other question to be considered is whether the government orders impugned in the writ petitions are liable to be quashed on account of infraction of the principles of natural justice. It is true, in a case of this nature where the payment already made is sought to be recovered, thereby visiting the employees with adverse monetary consequences, the affected employees should have been put on notice and their objections called for. But, it is by now well settled that in all cases of violation of the principles of natural justice, the court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the court in considering the effect of violation of the principles of natural justice. When undisputably the action taken is within the parameters of the rules governing the payment of HRA and CCA and moreover the university authorities themselves espoused the cause of employees while corresponding with the Government, it is difficult to visualize any real prejudice to the respondents on account of not affording the opportunity to make representation. We cannot, therefore, uphold the view of the Appellate Bench of the High Court on this aspect of this case.”

33. The petitioner entered service in 1990. His personal upgradation, conferred in 1998 with retrospective effect from 1991 was abruptly cancelled by the Office Order dated 02.11.1999. The High Court in W.P. No.105 of 2000 intervened to quash the cancellation, not on a narrow technicality, but on the fundamental ground that administrative actions affecting civil rights must be reasoned and cannot be the consequence of whim or administrative amnesia. The respondents were granted liberty to act in accordance with law. The liberty could never have been constituted as a license to act whenever they pleased, or years and decades later, nor

as an invitation to reopen the very foundation of this Court's earlier protective mantle.

34. A statistical analysis of the material timeline demonstrates:-

- i. Seven years between the initial Personal upgradation in (1991) and its approval in (1998);
- ii. 14 months until the first attempted cancellation in (1999);
- iii. 17 years thereafter before the respondent reopened the issue in (2017);
- iv. 19 years from the original upgradation from (1998 to 2017);
- v. 15 years after the first ACP benefit (2002 to 2017);
- vi. Seven years after pay fixation under the 6th CPC (2010 to 2017);
- vii. Six years before the petitioner's retirement, (2017 to 2023).

35. The respondents conduct, scrutinised statistically revealed as follows:-

- i. 100% of the petitioner's pay revisions in (1996, 2002, 2006, 2010) incorporated the disputed benefits. Not a single audit objection was raised for nearly 2 decades. At least four administrative instruments (1998, 2004, 2010, 2011) reaffirmed the petitioner's pay structure,
- ii. One judicial order of this Court in (2000) expressly protected the upgradation.
- iii. Zero allegations of misrepresentation have been brought against the petitioner across three decades.

36. The judicial conscience cannot remain immune to these statistical realities. These figures are not incidental; they reflect institutional

acquiescence and constitute a factual basis that critically challenges the respondent's plea of "mistake" or "wrongful grant".

37. The respondent submission of cumulative mistake, loses resonance when examined against the documented facts:-

- i. The 5th Pay Commission revision (1996)
- ii. The ACP upgradation (2002)
- iii. The 6th Pay Commission revision (2006 issued in 2010)
- iv. The departmental approval letter in 2011 all explicitly integrated the petitioner's pay structure. A cumulative mistake must be accompanied by cumulative protest. Contrarily there was cumulative endorsement.

38. Moreover, the issuance of show-cause notice dated 03.05.017 bears unstable indications of predetermined intent rather than preliminary enquiry. The Director's correspondence preceding the notice is overtly conclusive in tone, rendering the issue of the notice a procedural shell devoid of adjudicatory content.

39. Instead of acting with expedition, the respondent went into hibernation for 17 long years, awakening only in 2017 to issue a show-cause notice that not only lacked reasons, but bore unmistakable signs of a preordained mind. Administrative lethargy is one thing; administrative resurrection after two decades to unsettle benefits consistently acted upon is another-and the law does not condone such temporal indifference.

40. What the respondents seek to describe as a cumulative mistake, is in truth an accumulated acceptance - the unbroken continuation of benefits,

pay fixations, ACP entitlement and pay band revisions granted over nearly 20 years, repeatedly examined during 5th and 6th Pay Commissions and approved by the employer's own communications, including the Director's letter dated 12.09.2011 treating the petitioners advancement as *de facto* promotional upgradation.

41. Once, the employer has itself acknowledged, justified, and acted upon the benefits, it ill behoves the administration, after decades, invoke the sovereign rhetoric of "mistake", when such mistake was neither inadvertent, nor unknown, no recently discovered. What the respondent label as a mistake is in constitutional conscience, institutional indolence and belated remorse, not a legal ground to mulct an employee who served with fidelity.
42. Justice must not be fossilised into technicalities; it must breathe through the lived realities of the citizen. An employee who served an establishment for 33 years cannot, on the eve of retirement be told that the ladder on which he was permitted to climb was itself defective, and that he must now descend into pecuniary hardship. Such a stance is not merely inequitable, it is constitutionally, unconscionable.
43. The Supreme Court in *Rafiq Masih (supra)* a charter of fairness to certain employees held that recovery of long-standing payments, even if erroneous, is impermissible when the employee played no role in the irregularity and has structured his life around such payments. The Court caution that the law does not sanction the State's attempt to fix its own lapse by punishing the innocent. The petitioner belongs squarely within the class protected by that humane principle.

44. The respondents' reliance on "mistake does not confer right" is doctrinally accurate, but contextually hollow. It is equally settled that the doctrine cannot be expressed into service where the employee did not misrepresent. The benefits were examined and reaffirmed at multiple administrative stages. The alleged errors span 15 to 20 years and the correction is initiated after judicial quashment and decades of acquiescence.
45. Law is not a ledger where the respondent may debit citizen at its convenience; it is a constitutional compass that mandates fairness, promptness, and reasoned action. Delay becomes a vice when it carries punitive consequences.
46. Vague invocations of "mistake" without contemporaneous documentation cannot justify a belated reversal of benefits acted upon for decades. The respondents' belated awakening in 2017, after multiple Pay Commissions revisions accepted the petitioner status, betrays not a rectification of error, but a retroactive rationalisation of administrative oversight. State authorities are required to exhibit a degree of administrative diligence commensurate with the power they wield. Allowing the State to resurrect dormant grievances after 20 (twenty) years would amount to a judicial endorsement of arbitrariness. A public employer cannot buy its own inertia, create a false sense of legitimacy over years and then seek to demolish the edifice it itself built.
47. The writ petition brings to the fore a deeply disquieting pattern of administrative indecision, temporal indolence, and belated rectification, which when viewed through the constitutional lens of fairness and

reasonableness cannot stand judicial scrutiny. The relevant chronology is not merely a sequence of; it is a statistical testament to prolonged inaction, repeated acquiescence and successive administrative affirmations of the very benefits that the respondents now seek to recall.

48. A delay of 17 to 19 years in reopening service benefits is inherently unreasonable. The Supreme Court has repeatedly held that State action must be prompt and predictable. Recovery on the eve of retirement, imperils financial security, and undermines dignity, especially when the employee is blameless and faultless. The petitioner's structured career progression, financial commitments and benefits consistently affirmed for decades. The 2000 Order of this Court quashed the earlier cancellation. The respondents cannot indirectly circumvent that Order under the guise of rectification. A show-cause notice issued with a foreclosed mind is a notice in form, but not in substance, where the employee is faultless and the benefits have been acted upon for long years, recovery is impermissible. The respondent cannot evade responsibility for two decades of acquiescence by invoking mistake at a time convenient only to them. The magnitude of proposed recovery bases no proportion to the negligible contemporaneous diligence shown by the employer. Fairness in public administration mandates consistency, clarity, and timely action.- not retrospective disruption of vested financial positions.

49. In sum the respondent action is starred by delay, arbitrariness, misdirection, procedural impropriety, jurisdictional overreach, and constitutional insensitivity warranting unequivocal judicial correction.

50. Public administration is not a shifting desert where the sands of legality rearrange to suit administrative whims. When the State sleeps upon its powers for decades, it cannot awaken to frustrate the repose of a retired employee who neither misled nor manoeuvred the system. Law, equity, and conscience converge to protect such an employee from retrospective prejudice. The constitutional promise of fairness must not remain a hollow aspiration; it must animate every administrative action. The mind of the State must never be used to bruise the humble employee who gave his best years in quite service. Equity is not an intruder into administrative law; it is its soul. When authority sleeps upon its own powers for decades, it forfeits the privilege of disturbing the repose of an aged employee, whose only fault has been trust.
51. In the merged judicial conscience of the court, the impugned actions do not merely suffer from legal errors it suffers from a moral deficit incompatible with public administration governed by constitutional empathy.
52. For the reasons, elucidated above, the writ petition succeeds.
53. The Office Order/Show-Cause Notice dated 03.05.2017 is quashed. The consequential Office Order dated 01.08.2017 is set aside. All financial upgradations, pay fixations and ACP benefits granted to the petitioner shall stand affirmed. No recovery shall be initiated from the petitioner and the respondent shall correct their records accordingly. The representation of the petitioner shall be considered and positively effectuated.
54. In view of the above discussions, the instant writ petition being WPA 13911 of 2017 is allowed.

55. Accordingly, the writ petition being WPA 13911 of 2017 stands disposed of. Connected application, if any, also stands disposed of.

56. There is no order as to costs.

57. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)