IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 484 of 2026

1.Union of India represented through the General Manager, South East Central Railway, Bilaspur Zone, New GM Building, South East Central Railway, P.O. & P.S- Bilaspur, Chattisgarh-495001 viz. Sanjay Kumar Oswal, aged about 59 Years, S/o Late M C Oswal, presentlyposted as Deputy Chief Personnel officer (Gaz), South East Central Railway Bilaspur, Chhattisgarh, Officer's Colony, South East Central Railway Bilaspur, P.O. & P.S. Bilaspur Chhattisgarh.

2. The Principal Financial Adviser (FA & CAO) South Eastern Central Railway, Bilaspur Zone, New GM Building, South East Central Railway, P.O. & P.S- Bilaspur, Chattisgarh-495004.

3. The Divisional Railway Manager, South Eastern Central Railway, Bilaspur Division, DRM Complex, South East Central Railway, P.O. & P.S- Bilaspur, Chattisgarh-495004.

4. The Senior Divisional Finance Manager, South Eastern Central Railway. Bilaspur Division, DRM Complex, South East Central Railway, P.O. & P.S- Bilaspur, Chattisgarh-495004 ....**Petitioners**

Versus

1. Dr. Ranjit John Lakra (Retd. ACMS SHAHDOL), aged about 58 years, S/o Late J.M. Lakra, R/o Flat No.3A Archana Enclave, Harihar Singh Road, Morabadi, P.O.-Morabadi, P.S.-Bariatu, Ranchi, Jharkhand-834008.

Respondent

2. State Bank of India through its Assistant General manager, Centralized Pension Processing Centre, 4th Floor, Administrative Office, Judge Court Road, P.O. &P.S.-Patna, Bihar-800001.

Proforma Respondent.

CORAM: HON'BLEMR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Petitioners : Mr. Ramit Satender, CGC
Ms. Neelam Kumari, Advocate

For the Respondents :Mr. Rajesh Kumar, Advocate
Mr. Amit Kumar, Advocate
Mr. M.K. Sinha, Advocate

Order No. 02/Dated: 4th February, 2026
Per Sujit Narayan Prasad, J.

Prayer:

1. The instant writ petition, filed under Article 226 of the Constitution of India, is directed against order dated 23.05.2025 passed by learned Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi in O.A. No. 051/00206/2024 by which the Original Application was allowed in following terms:

"(i).The impugned order of the respondents for the recovery of excess payment issued vide Order/Letter No. SR.DFM/BSP/PEN-SETTLE/MISC/ dated 17.01.2024 (Annexure- 5) is quashed and set aside as the same is unsustainable in view of the law laid down by the Hon'ble Supreme Court in the case of State Of Punjab & Others Vs. RafiqMasih and subsequent DoPT OM dated 02.03.2016.

(ii) Since the counsel for the applicant has decided not to press for the relief in the form of a direction upon the respondent railway as well as the respondent bank to refund the amount which was already recovered from the pension of the applicant in terms of the order contained in No. SR.DFM/BSP/PEN-SETTLE/MISC/dated 17.01.2024, the tribunal will restrict its order to bar any further recovery only on this count of wrong pension fixation.

(iii) The respondent officials from now on will pay the revised pension as decided after correction in the pension fixation as per the rules.

The interim order of this tribunal passed on 15.05.2024 restraining the respondents from making any further recovery on this count of wrong pension fixation will be merged in this final order."

Brief facts of the case:

2. The brief facts of the case,as per the pleading made in the writ petition, needs to be referred herein reads, which reads as under:

3. The applicant, the respondent no. 1 herein, a former officer of the Indian Railway Medical Service, was appointed following his qualifying in the 1989 UPSC examination and joined as Assistant Divisional Medical Officer in Chakradharpur Division on 26.10.1990. He served the Indian Railways for over 25 years and took voluntary retirement from the post of ACMS/Shahdolon on 20.05.2016. The applicant, the respondent no. 1 herein, took voluntarily retirement in accordance with the applicable rules, which was duly accepted by the Respondent Railway(writ petitioner herein).

4. Post-retirement, his pension and other benefits were processed and disbursed by the appellant-Railway after verifying his service records. The applicant received a gratuity amounting to 20 lakhs and a commutation amount of ₹52.74

lakhs. A Pension Payment Order (PPO) dated 26.10.2016, under the 7th Pay Commission, fixed his basic pension at Rs. 1,24,750 with a monthly commutation factor of Rs. 49,900.

5. It is the case of the applicant, the respondent no. 1 herein, that he regularly received his pension without interruption from May 2016 until January 2024. But, all of a sudden, on 31.01.2024, the applicant, the respondent no. 1 herein, was informed by the Bank about a recovery of Rs. 6,95,346 from his pension account, following a directive issued by Sr. DFM, Bilaspur, who revised his basic pension to ₹1,18,750.

6. This adjustment, communicated through the Bank and not by the Railway authorities directly, was carried out without any prior notice or opportunity for the applicant to respond. Subsequent thereto, the pension disbursements were significantly reduced due to ongoing monthly deductions of ₹44,000.

7. The applicant, the respondent no. 1 herein, contends that the recovery order violates principles of natural justice as it was issued after more than seven years after the commencement of his pension and without providing him a chance to be heard. He argues that he played no role in the original pension calculation, which was entirely carried out by the appellant-Railway. It has been contended that the recovery thus placed undue financial and mental hardship on him despite no wrong doing on his part.

8. The case of the petitioner/Railway is that the pension of the respondent no. 1-applicant since has erroneously been fixed which was to be deducted by the authorities sometimes in the year 2021. However the same was executed sometimes in the year 2024 vide order dated 17.01.2024 and accordingly, the pension of the respondent no. 1-applicant was re-fixed and order of recovery was passed, which was assailed by the respondent no. 1-applicant before the Tribunal by filing Original Application.

9. The learned Tribunal, after hearing learned counsel for the parties, quashed and set aside the impugned order dated 17.01.2024 holding the same to be unsustainable in view of law laid down by the Hon'ble Supreme Court in the case of ***State Of Punjab & Others Vs. Rafiq Masih*** and subsequent DoPT OM dated 02.03.2016, against which instant writ petition has been filed.

Submission on behalf of Petitioners-Railway:

10. Mr. Ramit Satender, learned counsel for the petitioners-railway has assailed the impugned order on the ground that the applicant-respondent no. 1 herein, although was well conscious with the decision already taken in the year 2021 reducing the quantum of pension but the same was not challenged rather the same was challenged after lapse of three years in the year 2024, when the impugned order was acted upon the decision so taken in the year 2021, by filing the Original Application before the Tribunal.

11. It has been contended that when the applicant-respondent no. 1 was well conscious about the wrong fixation of pay, based upon which the pension has already been fixed and even after knowing the aforesaid fact when it was not challenged immediately then in such circumstances the decision to recover in consequence thereof, the decision taken in the year 2021, ought not to have been interfered with by the tribunal relying upon the judgment rendered in the case of ***State Of Punjab & Others Vs. RafiqMasih (supra)***.

Submission on behalf of respondent No. 1:

12. Per contra, learned counsel for the respondent no. 1 has defended the order passed by the learned tribunal and submitted that the order passed by the learned tribunal requires no interference.

13. The learned counsel has further submitted that the learned Tribunal after taking into consideration the factual aspect that applicant/respondent no. 1 has no role in erroneous pension fixation and the fixation was carried out by the responsible officers after due approval from the competent authority, has passed the impugned order, therefore the said order requires no intereferece by this Court.

Analysis:

14. We have heard learned counsel for the parties and gone through the finding recorded by the learned tribunal.

15. This Court is conscious regarding its jurisdiction which is to be exercised by the High Court in exercise of power conferred under Article 226 of the Constitution of India in the matter of order passed by the tribunal, as per the ratio laid down by Hon'ble Apex Court in the case of ***L. Chandra Kumar Vs. Union of India &Ors.*** reported in***(1997) 3 SCC 261*** particularly paragraph 99, wherein it has been held that the High Court is having power of judicial review to look into the legality and propriety of the order of the tribunal to the extent that if the order passed by the tribunal suffers from any perversity or the order is passed without following the principles of natural justice or there is error apparent on the face of order. For ready reference, paragraph 99 of the judgment is quoted as under:

> *"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The*

jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323- B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

16. The power of judicial review has also been deliberated by the Hon'ble Apex Court, which is to be considered while exercising the said power only to the extent that if any order is being passed found to be having error on the face of the order or without jurisdiction or suffers from perversity. The error apparent on the face of the order means that if the order appears on its face having with error, then only the power of judicial review is to be exercised.

17. The Hon'ble Apex Court in the case of ***West Bengal Central School Service Commission vs. Abdul Halim, (2019) 18 SCC 39,***has held at paragraph-30 that the power of judicial review must be exercised by the Court after determining that the impugned is vitiated by an error apparent on the face of the record and not the same has been established by a process of reasoning. Paragraph-30 of the aforesaid judgment is being referred as under:

> *"30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in SatyanarayanLaxminarayanHegde v. MillikarjunBhavanappaTirumale [SatyanarayanLaxminarayanHegde v. MillikarjunBhavanappaTirumale, AIR 1960 SC 137] . ---."*

18. In the case of **T.C. Basappa vs. T. Nagappa and Anr., (1955) 1 SCR 250**, their Lordship have held that the patent error in a decision can be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:

> *"11. … An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. …."*

19. Thus, on the basis of the aforesaid settled legal position it is evident that the power of judicial review can be exercised, if error on the face of the order impugned, challenged under the Article 226 of Constitution of India, appears to be there.

20. This Court is now proceeding to examine the propriety of the order passed by the learned tribunal in order to assess as to whether the finding so recorded by the learned tribunal is coming under the fold either of error apparent on the face of the order and suffers from perversity.

21. The fact since has already been referred hereinabove but for better appreciation of the consideration of the aforesaid issue, the admitted facts once again is being reiterated herein.

22. It is admitted case that the applicant-respondent no. 1 was appointed under Indian Railway Medical Officer, sometimes in the year 1990 and after serving a considerable period of 25 years, he voluntarily retired from service in the year 2016. After getting Voluntary Retirement he received all his retiral benefits as also his pension was fixed as per last pay drawn. However, sometimes in the year 2021, the writ petitioner-Railway detected that the pension of the applicant-respondent no. 1 was wrongly fixed. Therefore, it is an admitted case that initialy no such anomaly or error was found in fixation of pay and consequential pension of the respondent no.1/applicant rather when after four years of taking voluntary retirement by the applicant-respondent no. 1, the writ petitioner-railway sometimes in the year 2021 detected that the pension of the applicant-respondent no. 1 has wrongly been fixed and in the year 2024 the impugned order dated 17.01.2024 was passed after eight [08] years of taking voluntary retirement by the employee, by which order of recovery and order of deduction in pension has been passed.

23. It is equally admitted that the decision so taken in the year 2021 of wrong fixation of pension has not been challenged by the applicant-respondent no. 1 before the tribunal immediately after decision so taken by the writ petitioners-railway rather the challenge was made in the year 2024 when the decision so taken of reducing the quantum of pension and order of recovery of excess amount was passed vide order dated 17.01.2024, by filing the Original Application before the tribunal.

24. One of the ground has been taken by the writ petitioners-railway that fact about reduction of amount of pension even though was well known to the respondent no. 1-applicant sometimes in the year 2021 but he chose not to challenge the same meaning thereby he accepted the decision so taken by the authority, the writ petitioners.

25. But we are not in agreement with such argument since the said argument if will be accepted then the issue of cause of action or the recurring cause of action will be diluted. Law is well settled that in the matter of pension, the principle of "recurring cause of action" would be applicable and the recurring cause of action has been interpreted by Hon'ble Apex Court that in the matter of pension due to reduction therein the pensioner is having cause of action even after lapse of consideration period of time reason being that the pensioner is being made to suffer day-by-day and month-to-month basis.

26. "Recurring" means suffering of the litigant, particularly, the public servant if the suffering is continuing day by day, the same will be said to be recurring cause of action. Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. A recurring or successive wrong, occurs when successive acts, each giving rise to a distinct and separate cause of action, are committed and each act, in itself wrongful, constitutes a separate cause of action for sustaining a claim or a complaint, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of **M.R. Gupta v. Union of India [(1995) 5 SCC 628],** wherein at paragraph 5, it has been held as under:

> *"5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of imitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."*

27. Further, the Hon'ble Apex Court in the case of ***Union of India v. Tarsem Singh [(2008) 8 SCC 648]*** at paragraph 4 held as under:

> *4. <u>The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury.</u>*

> *<u>"Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action.</u> This Court in Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan [AIR 1959 SC 798] explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963) : (AIR p. 807, para 31)*
>
> *"31. … It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."*

28. The law is already settled by Hon'ble Apex Court that the pension will be said to be recurring cause, reference in this regard be made to the judgment rendered in the case of ***M.L. Patil (Dead) through Legal Representatives v. State of Goa, (2023) 1 SCC 660***. For ready reference the relevant paragraph of the aforesaid judgment is being quoted hereunder as:—

> *"6. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of*

60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1-1-2020. Under the circumstances, the impugned judgment and order [Laxman J. Chavan v. State of Goa, 2020 SCC OnLine Bom 236] passed by the High Court is required to be modified to the aforesaid extent."

29. It is pertinent to mention herein that there is no explanation on behalf of writ petitioners-railway that what prevented the authority in acting upon the the decision so taken in the year 2021 i.e., the day when the decision was taken to reduce the pension, rather, they sat idle on the decision so taken in the year 2021 for a long period of more than three years, and only after that in the year 2024 acted upon, which prompted the applicant to approach the tribunal.

30. This Court, therefore, is of the view that the argument to that effect as has been advanced on behalf of writ petitioners that the decision so taken by reducing the quantum of pension in view of argument since has been challenged in the year 2024, as such no indulgence ought to have been given by the tribunal but based upon the reason as aforesaid we hereby reject the said argument holding it, having no substance.

31. So far as recovery is concerned, the law is well settled that salary or pension or any financial benefit is not allowed to be taken contrary to the entitlement and if such amount is being paid contrary to the entitlement then the State will have the liberty to rectify it so that the illegality may not be perpetuated, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Union of India v. Arulmozhi Iniarasu, (2011) 7 SCC 397*** wherein at paragraph 26 it has been held that only because an illegality has been committed, the same cannot be directed to be perpetuated, for ready reference the relevant paragraph is being quoted as under:

> *"26. Lastly, as regards the submission that the action of the appellants is highly discriminatory inasmuch as some similarly situated persons have been appointed/absorbed as Sepoys, the argument is stated to be rejected. It is well settled that a writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation on the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated. It is trite law that there cannot be equality in illegality. (Ref. Sushanta Tagore v. Union of India [(2005) 3 SCC 16] , U.P. State Sugar Corpn. Ltd. v. Sant Raj Singh [(2006) 9 SCC 82 : 2006 SCC (L&S) 1610] , State v. Sashi Balasubramanian [(2006) 13 SCC 252 : (2007) 3 SCC (Cri) 337] and State of Orissa v. Prasana Kumar Sahoo [(2007) 15 SCC 129 : (2010) 2 SCC (L&S) 765] .)"*

32. Thus, Law is also well settled that if any illegality has been pointed out, then it is the bounden duty of the authority to rectify it to follow the principle that illegality cannot be allowed to be perpetuated.

33. Here, the only issue is as to whether recovery can be said to be justified if there is no mis-representation on the part of the applicant [employee] that too after separation from service in consequence of voluntary retirement, way back in May, 2016.

34. The issue since is of recovery and hence, the proposition which has been laid down by the Hon'ble Apex Court in judgments passed time to time needs to be referred herein.

35. Initially, the Hon'ble Apex Court has considered the issue of recovery in the case of ***Shyam Babu Verma vs. Union of India, (1994) 2 SCC 521*** wherein the recovery has been said to be improper if the recovery is being made from the salary of the concerned employee on the basis of wrong fixation if there is no misrepresentation or fraud said to be committed on the part of the concerned public servant. For ready reference, relevant paragraph of the said judgment is being referred as under:

> *"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. January 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 January 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.*

36. Again, in ***Sahib Ram v. State of Haryana and Ors. [1995 Supp (1) SCC 18],*** the Hon'ble Apex Court held that although the appellant therein did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid his salary on the revised pay scale and this was not on account of misrepresentation made by the appellant but by a mistake committed by the Principal and as such the amount already paid to the appellant need not be recovered. For ready reference the relevant paragraph is being quoted as under:

> *"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."*

37. Subsequent to the aforesaid judgment, the Hon'ble Apex Court has considered the issue of recovery in the case of ***Chandi Prasad Uniyal vs. State of Uttarakhand, (2012) 8 SCC 417*** wherein by deferring with the view taken by the Hon'ble Apex Court in ***Shyam Babu Verma vs. Union of India (supra)*** has taken the contrary view by holding therein that if the amount has been paid, the same since is of a tax payers money, hence, the same is to be recovered from the concerned employee. Relevant paragraph of the judgment rendered in **Chandi Prasad Uniyal vs. State of Uttarakhand** (supra) is being referred as under:

> *"14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."*

38. The Hon'ble Apex Court in view of the conflicting judgment on the issue of recovery has referred the matter before the Larger Bench in the case of ***State of Punjab and Ors. vs. Rafiq Masih (White Washer) and Ors., (2014) 8 SCC 883*** but the Hon'ble Apex Court without answering the reference remitted the matter before the Division Bench for appropriate disposal.

39. Consequently, the Division Bench of the Hon'ble Apex Court in the case of ***State of Punjab and Ors. vs. Rafiq Masih (White Washer) and Ors., (2015) 4 SCC 334*** at paragraph-18, has laid down the guidelines which is required to be followed by the State in making recovery. For ready reference, paragraph-18 of the said judgment is being referred 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."*

40. It is evident from the guideline, as referred hereinabove, which is altogether five in number and fifth is conferment of power upon the Court to adjudge by making a balance of financial hardship holding therein that 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.

41. After having referred relevant paragraph of the judgment rendered by the Hon'ble Apex Court in the case of ***State of Punjab &Ors Vs. Rafiq Masih (White Washer) &Ors (supra),*** basing upon which the learned tribunal has also passed order, which is impugned herein, now the Court is proceeding to consider as to whether the order so passed by the tribunal suffers from the error apparent on the face of the order or perversity.

42. It is evident by considering the admitted fact, as referred hereinabove that the amount sought to be recovered after lapse of 8 years but there is no justification about non-recovery of the said amount from the day i.e. in year 2021, when the decision was finally taken by the authority till date of passing of the impugned order i.e.17.01.2024.

43. It is admitted fact that the applicant was not holding the post of either class IV or Class III rather was holding the post of Additional Chief Medical Superintendent. The question of adjudging the financial hardship as per the guidelines, as available under paragraph 18 of the judgment rendered in ***State of Punjab &Ors Vs. RafiqMasih (White Washer) &Ors (supra),*** is relevant in the context.

44. We are conscious that the employee after separation from service is getting the pension which is half of the salary plus dearness relief, since there is no provision for the pensioner to get the dearness allowance rather the dearness allowance is considered to be the dearness relief and is merged to the amount of pension. The question of hardship of a pensioner after eight years on getting reduced pension is the core of consideration by this Court.

45. There is no justification as to why for 8 years the employer sat idle and had not recovered the amount rather the amount so deducted is after lapse of 8 years having no proper explanation and there cannot be any explanation once the decision has been taken in the year 2021 then why the decision so taken for deduction in pension and recovery was not acted upon immediately rather after lapse of more than 3 years, in the year 2024 the impugned order of recovery and deduction in pension has been passed.

46. This Court, considering the fact that after lapse of 8 years from separation from service if the amount will be allowed to be deducted from the monthly pension even though admittedly there was no misrepresentation on the part of the employee concerned, as per the admitted case of the writ petitioner-employer [railway herein], is of the view that even though the applicant-employee [respondent no. 1 herein] is not holding the post of Class III or Class IV but judging the financial hardship as per the guidelines, as available under paragraph 18 of the judgment rendered in ***State of Punjab &Ors Vs. RafiqMasih (White Washer) &Ors (supra),*** certainly applicant/respondent no. 1 would be made to suffer without his fault.

47. This Court, therefore, is of the view that the view which has been taken by the learned tribunal is neither suffers from any perversity nor the order is passed without following the principles of natural justice nor there is error apparent on the face of order.

48. This Court in exercise of power conferred under Article 226 of the Constitution of India to exercise the power of judicial review is of the view that the impugned order dated 23.05.2025 passed by the learned tribunal, requires no interference.

49. Now proceeding further, as has been referred above, as to why no decision for correction of erroneously fixed pension was taken immediately after separation of the applicant/respondent from service in year 2016 and only in the year 2021 decision was taken to rectify the said error and even then impugned order for execution of recovery was passed on 17.01.2024.

50. Admittedly, the writ petitioners are dealing with the public money and certainly the public money means the tax payers money and as such nobody can be allowed to play with the public money. The question of wrong fixation of the pension is the core of the issue. It is admitted fact that fixation of pension is not under the domain of the employee rather it is under the exclusive domain of employer then why the pension was fixed errenously and the said error was allegedly detected after lapse of more than five years 2021 and even after detection of the said wrong fixation no action was taken for a long period of three years and only in the year 2024 vide impugned order dated 17.01.2024, the order of recovery and re-fixation of pension was passed.

51. It is the matter of enquiry to be done by the authority concerned. The fault lies upon the authorities/officers who are in the helm of the affairs and hence, in order to put a restrain, it is the right time to pass an order by this Court in exercise of power conferred under Article 226 of the Constitution of India.

52. It needs to refer herein that in almost similar circumstances this Court in the case of ***The State of Jharkhand & Ors.***

vs. Kamla Devi & Anr., (L.P.A. No.666 of 2018) has passed direction upon the authority concerned to fix accountability upon the erring officials, for ready reference the relevant pargraph of the said order is being quoted as under:

> *"43. We, therefore, are of the view that when the Hon'ble Apex Court has passed an order in the case of Rafiq Masih (Supra) which binds under Article 141 of the Constitution of India and as such, there cannot be any recovery if one or the other cases are falling under the category of paragraph-18 thereof.*
>
> *44. But the question is that how such occasion has come, if the authority who are the authority to fix the pay scale or extend the benefit in the capacity of his competency if will take such decision in pursuant to the entitlement/decision, as per the policy decision of the State, then where is the question of making excess payment to the concerned employee. Therefore, the fault lies upon the authority who are in the helm of the affairs and hence, in order to put a restrain, it is the right time to pass an order by this Court in exercise of power conferred under Article 226 of the Constitution of India, which we are exercising sitting in intra-court appeal, since, the intracourt appeal is the furtherance of the proceeding of Article 226 of the Constitution of India.*
>
> *45. In view thereof, let accountability be fixed upon the erring officials in the present case and after conducting due inquiry by following the due procedure of law, i.e., by following the principle of natural justice, the required decision be taken for making recovery from the concerned erring officials.*
>
> *46. Let this order be communicated to the Chief Secretary, Govt. of Jharkhand and the Secretary, Department of Finance, Govt. of Jharkhand.*

53. In similar circumstances herein this Court, since is exercising the power conferred under Article 226 of the Constitution of India and as such cannot close its eyes in spending the public money like this and due to the fault committed by the pay-fixation authority, why the state exchequar will suffer.

54. This Court, therefore, is of the view that a further direction is required to passed upon the Chairman, Railway Board to conduct enquiry as to for whose fault, the pension has wrongly been fixed and after fixing the accountability let the excess amount paid be recovered from the concerned(s).

55. In view thereof, let accountability be fixed upon the erring officials in the present case and after conducting due inquiry by following the due procedure of law, i.e., by following the principle of natural justice, the required decision be taken for making recovery from the concerned erring officials.

56. The instant writ petition stands dismissed with the aforesaid direction and observation.

57. Pending Interlocutory Application, if any, stands disposed.

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

4th February, 2026

A.F.R./ Alankar