

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 24687 of 2013

ORDER:

Heard Sri A.V.V.S.Bhujanga Rao, learned counsel for the petitioner, learned Government Pleader for School Education and learned Government Pleader for Finance and Planning.

2. The case of the petitioner, in brief, is as follows:

a) The petitioner was initially appointed as a Language Pandit Grade-II on 20.10.1976 and he possessed Grade-I qualifications from the date of the petitioner's initial appointment. The then Government of Andhra Pradesh issued G.O.Ms.No.330, Education, dated 10.08.1983 giving benefit of Grade-I scale from 10.08.1983 to the Grade-II Language Pandits, who possessed Grade-I qualification and appointed prior to 12.03.1982. As per the said G.O., the petitioner obtained the benefit of Grade-I scale from 10.08.1983, because the petitioner was appointed prior to 11.03.1982 and possessed Grade-I qualification. The petitioner retired from service after attaining age on superannuation on 30.04.2011

and that the petitioner's last pay drawn is Rs.36,700/-. The benefit of Grade-I scale as per G.O.Ms.No.330, Education, dated 10.08.1983 is taken away by issuing orders in G.O.Ms.No.176 Education (SE.Ser.II) Department, dated 22.12.2000. Aggrieved by the said orders, O.A.No.377 of 2001 and batch were filed before the Tribunal and the said Tribunal dismissed the said O.As upholding G.O.Ms.No.176 Education (SE.Ser.II) Department, dated 22.12.2000. Aggrieved by the orders of the Tribunal, a batch of writ petitions i.e. W.P.Nos.26260 of 2000 were filed before the High Court. The Division Bench of the High Court vide its judgment dated 12.09.2003 declared that the orders of the Tribunal are erroneous and illegal. Against the said orders, the State Government filed S.L.P.Nos.5869-5998 of 2004 before the Supreme Court and the same was dismissed by the Hon'ble Supreme Court on 27.07.2004.

b) Instead of honouring the judgments of the High Court and Apex Court with an intention to deny the benefit of G.O.Ms.No.330 Education, dated 10.08.1983, the State Government have enacted law called Andhra Pradesh

Language Pandits Grade-II (Regulation of Scale of Pay) Act, 2005 known as Act 1 of 2005, dated 11.01.2005.

c) In view of the fact that the petitioner was appointed as Grade-II on 01.08.1979, much prior to the cut of date i.e. 12.03.1982 specified in G.O.Ms.No.330. The petitioner will fall within the ambit of the said GO and any subsequent orders are not applicable to the petitioner. The petitioner received the benefits of Grade-I scale from the year 1983 onwards and after 22 years by applying the enactment of Act 1 of 2005 amounts were recovered from petitioner's pensionary benefits at once in lump sum. The respondent authority not only recovered amount of Rs.4,21,773/- from the petitioner's pensionary benefits, the petitioner last pay was also reduced from Rs.36,700/- to Rs.29,950/-. Aggrieved by the same, the petitioner approached this Court by filing the present writ petition seeking the following reliefs:

“a) to declare the action of the respondents in stepping down the petitioners pay in Grade-II from 1983 as per Act 1 of 2005 is illegal, arbitrary and violative of Articles 14, 16, 21 and 300 A of the Constitution of India and consequently declare that the petitioner is entitled all

pension and pensionary benefits basing on the last pay drawn i.e. Rs.36,700/-.

b) to declare further that the action of the respondent authorities in recovering the amount of Rs.4,21,773/- from the petitioner which were already and actually paid by the Government itself in terms of G.O.Ms.No.330 Education, dated 10.08.1983 as being illegal, arbitrary and contrary to the judgment reported in 2010(4) ALT 145 (FB) and consequently direct the respondent to refund the said recovered amount to the petitioner.

c) to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

3. Learned counsel for the petitioner submits that the issue in the present case is squarely covered by various judgments and contended that the writ petition should therefore, be allowed as prayed for. The details of the said judgments are as follows:

High Court of Telangana at Hyderabad:

(1) Full Bench Judgement dated 16.04.2010 passed in W.P.No.21457 of 2004 and batch reported in 2010 (4) ALT 145 in State Language Teachers Association, represented by its State General Secretary, Palla Sataiah and others v State of Andhra Pradesh, represented by its Secretary to Government, Legislative Affairs and Justice, Hyderabad and others of erstwhile High Court of Andhra Pradesh at Hyderabad.

(2) Order dated 24.02.2022 passed by a Division Bench in W.P.No.32896 and 33790 of 2013.

(3) Order dated 24.02.2022, passed by a Division Bench in W.P.No.21866, 26512, 26521 of 2021.

(4) Order dated 06.06.2022 passed by a Division Bench in W.P.Nos.18263, 22737, 18249, 22845 of 2022.

High Court of Andhra Pradesh at Amaravathi:

(1) Order dated 26.01.2021 passed in W.P.No.25858 of 2013.

(2) Order dated 18.01.2021 passed by a Division Bench in W.P.Nos.31507, 31491, 31496 of 2013.

(3) Order dated 22.06.2020 passed by a Division Bench in W.P.No.33315 of 2013.

4. Learned Government Pleader appearing for the respondent, on the other hand, referred to para 8 of the counter and contended that the petitioners are not entitled for the relief prayed for in the writ petition and more so, in specific referred to para 70 of the Judgment in **State Language Teachers' Association, represented by its State General Secretary, Palla Sathaiah and others v State of Andhra Pradesh, represented by its Secretary to Government, Legislative Affairs and Justice, Hyderabad and others**¹ of the erstwhile High Court of Andhra Pradesh and further contended that the petitioners are

¹ 2010(4) ALT 145 = 2010 (0) Supreme (A) 308

entitled to the benefits already accrued to them till the date of ordinance only.

5. **Perused the record:**

6.(a) A bare perusal of Para 70 of the said judgment reads as under:

70. "Hence, the provisions of Act 1 of 2005 to be read down and so far as the operation of the said Act in retrospectivity is concerned, the same to be held as bad in law and further it is made clear that the writ petitioners and similarly placed persons in all respects be entitled to the benefits already accrued to them till the date of Ordinance and the Ordinance which had been replaced by the Act aforesaid be operative in future and the past benefits accrued to the petitioners and the similarly placed persons would not in any way be affected by this Legislation."

(b) A bare perusal of para 73 clause (iii) of the order of the Full Bench clearly indicates that the contention of the learned Government Pleader does not hold good and the same is not tenable.

(c) Para 73 Clause (iii) of the order of the Full Bench dated 16.04.2010 in the **State Language Teachers' Association's** case referred to 1st cited above, reads as under:

“73. Thus the writ petitions are partly allowed to the extent indicated above. No costs.

ORDER:

In view of the majority, the writ petitions stand disposed of in the following manner:

(i) The impugned Act is constitutionally valid and does not violate Articles 14 and 16 of Constitution;

(ii) The impugned Act does not amount to usurpation of judicial powers of legislature. It only removed the basis for the decision of this Court in P.C.S.Naidu v Correspondent, SSRSO, Upper Primary School and it is not ultra vires;

(iii) The impugned Act is silent with regard to recovery of the amounts already paid to those Grade-II Pandits who availed the benefit under G.O.Ms.No.330, dated 10.08.1983 and hence, the Government shall not recover any amount actually and already paid to any of the Language Pandits Grade-II who were given benefit of Scale of Pay of Grade-I.”

7. A bare perusal of paras 10 and 11 of the judgment dated 24.02.2022 of the Division Bench of this Court in W.P.No.32896 and 33790 of 2013 extracted hereunder clearly indicate that the submissions putforth by learned Government Pleader in the present petition were already putforth by the Government before the Division Bench of this Court and also in fact, considered by the Division Bench of this Court and it

was categorically observed at paras 10 and 11 of the said judgment as under:

“10. With reference to recovery, it is seen from the record that the excess amount was paid to the employee from 01.02.2005 till their retirement from service. By the time, steps were taken to recover the amount, employees have already retired from service.

11. Issue of wrong pay fixation on higher side, payment of higher amounts than entitlement of an employee and on revision of such wrong pay fixation, recovery of amount was considered by the Hon'ble Supreme Court in State of Punjab & others Vs Rafiq Masth (White Washer) & others².

11.1. On review of precedent decisions, the Hon'ble Supreme Court laid down broad parameters to deal with the case of recovery. Paragraph No.18 reads as under :

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few

² 2015(4) SCC 334

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."

8. In so far as the present case is concerned, para 18(2) and (5) would apply. In the present case admittedly the petitioner has retired from service by the time recovery was

made. Identical are the circumstances of the petitioners in W.P.Nos.32896 and 33790 of 2013 as the present petitioner and the Division Bench of this Court specifically referred to the same at para 12 as follows:

“In so far as this case is concerned, para 18 (ii) and (v) apply. In these cases, admittedly, the employees have retired from service by the time recovery was made.”

The Hon'ble Division Bench further observed and concluded at para 15 of the said judgement, dated 24.02.2022 passed in W.P.No.32896 and 33790 of 2013 as follows:

“Having regard to the above, the writ petitions are partly allowed setting aside the order of Tribunal to the extent of directing the petitioners to send revised proposals for pension fixation, taking the last pay drawn by the employees on the date of their retirement i.e. Rs.37,600/- and consequential direction to revise the pension, ignoring the revised last pay drawn on account of revision and re-fixation of their pay to a lower level in accordance with Act 1 of 2005 is set aside. However, the petitioners are not entitled to recover the excess amount already drawn by the employees before their retirement. Therefore,

petitioners are directed to refund the amount that was withheld towards adjusting the excess amount drawn by the respondent employees. Pending miscellaneous petitions, if any, shall stand closed."

9. A bare perusal of the Division Bench judgment dated 24.02.2022 passed in W.P.No.21866, 26512 and 26521 of 2021, whereunder, the Division Bench of this Court directed the implementation of the orders of the A.P. Administrative Tribunal, Hyderabad, in O.A.Nos.9434, 9844, 9447 of 2012, within a period of three months from the date of receipt of the said order, whereunder the A.P. Administrative Tribunal had allowed the said OAs as per the Full Bench judgment of this Court reported in 2010(4) ALT 145 in **State Language Teachers' Association's** case referred to above 1st cited and directed to refund of the amount of gratuity recovered from the applicants/petitioners thereunder within a period of four weeks, would also indicate a similar view.

10. Learned Government Pleader also by way of written arguments filed on 07.08.2022 referred to the judgment of the Apex Court reported in 7 in **Chandi Prasad Uniyal and**

others v State of Uttarakhand and others³ and in particular para 14 and contended that the petitioner is not entitled for the relief prayed for.

A bare perusal of the Para 14 of the said judgment reads as under:

“We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. 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 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 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.”

³ (2012) (8) SCC 41

11. The above said contention of learned Government Pleader would not stand for the following reasons:

(i) The Apex Court in its Division Bench judgment reported in 2022 SCC online SC page 536 in Thomas Daniel v State of Kerala⁴ at para 9 held as follows:

“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

⁴ 2022 SCC online SC 536

circumstances of any particular case order for recovery of amount paid in excess.

The petitioner in the present case was appointed as Grade II language pandit in Vivekananda Vidya Niketan (aided UPS, New Town, Mehboobnagar) on 20.10.1976 and till retirement, he continued in the same school. The petitioner retired on 30.04.2011. The petitioner filed the present writ petition for refund of recovered gratuity amount, which was recovered after retirement on the ground of excess pay and allowance due to cancellation of G.O.ms.No.330, dated 10.08.1983 by Act 1 of 2005, dated 11.01.2005. Initially, Government issued G.O.Ms.No.330, Education (H1), dated 10.08.1983 and extended a benefit of Grade-I scale to the Grade-II language pundits on the ground of stagnation in promotion. **However, after 22 years, i.e. in the year 2005**, the said GO was cancelled retrospectively from its date of issuance i.e. from 1983 by an enactment Act 1 of 2005, and orders were issued for re-fixation of pay in respect of the petitioner and for recovery of the excess paid amount from 01.02.2005 to 30.04.2011 i.e. till the date of retirement of the petitioner from service from the pension benefits of the

petitioner vide proceedings dated 13.07.2011 vide R.C.No.13.2011-2012 of the Special Officer and MEO MP Mahabubnagar, Vivekananda Vidyanikethan (AIDED), Mahabubnagar.

ii) The Supreme Court considered the situations of hardship caused to an employee, if recovery is directed to reimburse the employer 2015 (4) SCC 334 in **State of Punjab and others v Rafiq Masih (White Washer and others)**⁵ and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus at **para 8 and 18** of the said judgment and the same is extracted hereunder:

“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

⁵ 2015 (4) SCC 334

concerned employee. If the effect of the recovery from the concerned employee 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.

“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."

(iii) In view of the law laid down by the Supreme Court in its three Judges Bench Judgment in Syed Abdul Khader v State of Bihar reported⁶ in 2009(3) SCC 475.

In the said case, **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.**

⁶ 2009(3) SCC 475

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 at para 59 as hereunder:

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.”

(iv) In Col. B.J. Akkara (Retd.) v. Government of India and Others⁷ this Court considered an identical question as in the present case and observed at para 27, 28 and 29 as follows:

“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 76 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 :

⁷ (2006) 11 SCC 709

(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 2 (2006) 11 SCC 709 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 view of the fact that in **State Language Teachers' Association's** case referred to above, it was held that Act 1 of 2005 is constitutionally valid, yet, however, there was a

clear observation at para 73 Clause (iii) not to recover any amount from any of the Language Pandits Grade II, who was given benefit of scale of pay of Grade-I, and further in the present case the Court finds that the alleged payment made to the petitioner is not on account of any fault on his part, the petitioner was a LANGUAGE PANDIT GRADE-II and in view of the judgment of the Supreme Court in the case of **State of Punjab and others v Rafiq Masih (White Washer) (2014)8 SCC 833 (referred to above)** no recovery can be made.

13. Taking into consideration the Full Bench judgment in **State Language Teachers' Association's** case referred to above, the Apex Court judgment in **Rafiq Masih (White Washer) referred to above** and also the view taken by the Division Bench of the High Court of Telangana at Hyderabad passed in W.P.No.32896 and 33790 of 2013, dated 24.02.2022 and also the Division Bench Judgement dated 24.02.2022 passed in W.P.No.21866, 26512 and 26521 of 2021 and the law laid by the various Apex Court judgments referred to and discussed above, this Court finds that alleged excess payment made to the petitioner is not on account of

any fault on his part and in view of the law laid down in the various judgments referred to and discussed above no recovery can be made.

14. Accordingly, the writ petition is allowed as prayed for and the respondents are directed to pay Rs.4,21,773/- recovered from the petitioner on proper acknowledgment, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, shall stand dismissed.

SUREPALLI NANDA, J

Date: 17.08.2022

Note: L.R.Copy to be marked

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