IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 112 of 2019

Shri K. Yangla, aged about 62 years, S/o (L) K. Vakham,

... Petitioner

-Versus-

1. The State of Manipur through the Chief Secretary-cum-Secretary (Home), Government of Manipur,

2. The Director General of Police, Government of Manipur,

3. The Superintendent of Police, Ukhrul District, Govt. of Manipur,

4. The Under Secretary (Pension Cell), Govt. of Manipur,

5. The Accountant General (A&E), Imphal,

... Respondents

B E F O R E

HON'BLEMR. JUSTICE AHANTHEMBIMOL SINGH

For the petitioner	::	Mr. Kh. Tarunkumar, senior Advocate asstd. by Mr. Jemon, Advocate
For the respondents	::	Mr. Niranjan Sanasam, GA & Mr. S. Suresh, Advocate
Date of hearing	::	**29-01-2024**
Date of judgment & order	::	**24-04-2024**

JUDGMENT & ORDER

[1] Heard Mr. Kh. Tarunkumar, learned senior counsel assisted by Mr. Jemon, learned counsel appearing for the petitioner, Mr. Niranjan Sanasam, learned GA appearing for the respondents No. 1 to 4 and Mr. S. Suresh, learned counsel appearing for the respondent No. 5

In the present writ petition, the petitioner is challenging the gratuity payment order dated 22-11-2017 issued by the Office of the Accountant General (A&E), Manipur ordering for recovering of a sum of Rs. 7,21,073.00/- from the gratuity payable to the petitioner allegedly on account of over-payment of pay and allowances to the petitioner and also praying for issuing direction to the respondents to refund the deducted amount of Rs. 1,89,889.00/- to the petitioner within a stipulated period.

[2] The facts of the present case, in a nutshell, are that while the petitioner was serving as an Assistant Sub-Inspector of Police in the Manipur Police Department, a Departmental Enquiry was held against him and on the basis of the enquiry report, the S.P., Ukhrul, issued an order dated 07-01-2010 imposing upon the petitioner a major punishment of withholding his increment with cumulative effect for a period of three years from the date of suspension of the petitioner from service. Subsequently, the petitioner retired from service as a Sub-Inspector of Police w.e.f. 29-02-2016 on attaining the age of superannuation. After the retirement of the petitioner, the Office of the Accountant General (A&E), Manipur, issued a gratuity payment order dated 22-11-2017 for payment of a sum of Rs. 1,86,539/- as retirement gratuity. In the said order, it was also mentioned that a sum of Rs. 7,21,073/- on account of over-payment of pay

and allowances may be recovered. The said order also indicated that a sum of Rs. 1,89,889/- have also been deducted from the total gratuity payable to the petitioner.

[3] The Office of the Principal Accountant General (A&E), Manipur, respondent No. 5 herein, gave the following two reasons for issuing the impugned gratuity payment order and for deducting the amount of Rs. 1,89,889/- from the total gratuity amount payable to the petitioner:-

(i) On receipt of the pension proposal of the petitioner, the Office of the Principal Accountant General scrutinized the service record of the petitioner and found irregularities in fixation of his pay in that on promotion to the post of ASI, the petitioner's pay scale was fixed at Rs. 4,500/- on 21-08-2005 instead of fixing at Rs. 4,400/- As a result, consequent upon revision of pay under the Revision of Pay Rules, 2010, the petitioner's pay was fixed at Rs. 8,370 + 2,400/- on 01-01-2006 instead of Rs. 8,190 + 2400/- as can be seen from the document marked as Annexure - X/1 annexed to the counter affidavit of respondent No. 5. The above has resulted in over-payment to the petitioner more than his entitlement; and

(ii) By an order dated 07-01-2010 issued by the S.P., Ukhrul in connection with the Departmental Enquiry held against the petitioner, the petitioner was imposed a major penalty of withholding his increment with cumulative effect for a period of three years from the date of his suspension from service, however, in contravention of the said order issued by the

disciplinary authority, the Department released the petitioner's full pay and allowances without withholding the increment for a period of three years with cumulative effect. This has also resulted in over-payment of pay and allowances to the petitioner.

[4] Mr. Kh. Tarunkumar, learned senior counsel appearing for the petitioner submitted that the petitioner is entitled to enjoy the full gratuity amount due payable to him as he never committed any misrepresentation or fraud and that if there was any fault on the part of the petitioner regarding drawing of his monthly pay and allowances, the concerned authorities should have informed him in time to rectify such mistake and that if the petitioner had drawn some excess amount due to the miscalculation by the authorities without any fault on his part, the authorities are not permitted to recover the excess withdrawn amount from his retirement gratuity amount and that the concerned authorities should not be permitted to take advantage of their own mistakes.

[5] The learned senior counsel further submitted that as the impugned order for recovery of the alleged excess payment of pay and allowances had been issued after the petitioner retired from service, no such recovery can be made in view of the settled principle of law laid down by this court as well as by the Hon'ble Apex Court in a catena of decisions. It has also been submitted by the learned senior counsel that the issues raised in the present writ petition are squarely covered by the following judgements:-

1. **(1994) 2 SCC 521 "Shyam Babu Verma & ors. Vs. Union of India & ors."** wherein it has been held 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."

2. ***(2009) 3 SCC 475 "Syed Abdul Qadir & ors. Vs. State of Bihar & ors."*** wherein it has been held as under: –

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) 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."

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India. Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara (Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur."

"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."

3. (***2015) 4 SCC 334 "State of Punjab & ors. Vs. Rafiq Masih (White Washer) & ors."*** wherein it has been held 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 b 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."

4. ***2022 SCC OnLine SC 536 "Thomas Daniel Vs. State of Kerala & ors."*** wherein it has been held as under:–

"(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery

is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."

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

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

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

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

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

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular

interpretation of rule/order, which is subsequently found to be erroneous."

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

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

"(12) In Syed Abdul Qadir and Others v. State of Bihar and Others 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 and Others v. Rafiq Masih (White Washer) and Others 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."

"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."

"(14) Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General."

"(15) Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified."

[6] Mr. S. Suresh, learned counsel appearing for the respondent No. 5 submitted that on receipt of the pension proposal of the petitioner, the

Office of the Principal Accountant General (A&E), Manipur scrutinized the service record of the petitioner and found some irregularities in fixation of his pay. According to the learned counsel, on promotion to the post of ASI, the petitioner's pay was fixed at Rs. 4,500/- on 21-08-2005 instead of Rs. 4,400/- and that as a result, consequent upon revision of pay under ROP, 2010, the petitioner's pay was fixed at Rs. 8,370 + 2,400/- on 01-01-2006 instead of fixing at Rs. 8,190 + 2,400/- thereby resulting in over-payment to the petitioner more than his entitlement. It has also been submitted by the learned counsel for the respondent No. 5 that by an order dated 07-01-2010 issued by the S.P., Ukhrul in connection with a Departmental Enquiry held against the petitioner, a major punishment of withholding increment with cumulative effect for a period of three years from the date of suspension was imposed upon the petitioner, however, in contravention of the said order, the Department released the petitioner's full pay and allowances without withholding increment for a period of three years with cumulative effect. According to the learned counsel, this has also resulted in over-payment of pay and allowances to the petitioner.

[7] It has also been submitted by Mr. S. Suresh, learned counsel that to make recovery of Government dues as per existing rules is the bounded duty of the respondent No. 5 and that the amount of Rs. 1,89,889/- was deducted from the retirement gratuity of the petitioner as over-payment of pay and allowances arising due to irregular fixation of pay with the consent of the petitioner. In this regard, the learned counsel draw the attention of this court to the following Consent Certificate and Undertaking given by the petitioner, which are enclosed as Annexure-X/8 to the affidavit-in-

opposition of the respondent No. 5 and Annexure-X/15 to the supplementary affidavit of the respondent No. 5, which reads as under:-

> ***"CONSENT CERTIFICATE***
>
> ***Shri/ Smt. K. Yangla Ex. S.I. is hereby given Consent Certificate for recovery over payment, if any from my final pension/ Gratuity.***
>
> ***K. Yangla***
> ***Signature of the pensioner."***
>
> ***"ANNEXURE – III***
>
> ***UNDERTAKING***
>
> ***I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies notices subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.***
>
> ***Sd/-***
> ***Name: K. Yangla***
> ***Designation: ASI"***

[8] According to the learned counsel, the Consent Certificate was given by the petitioner after his retirement and in connection with the settlement of his pension and other retiral benefits and that the Undertaking was given by the petitioner as mandated by the Manipur Services (Revised Pay) Rules, 2010 and at the time of implementation of the said rules.

[9] The learned counsel further submitted that the orders dated 27-07-2018 passed by this court in WP(C) No. 258 of 2018 and WP(C) No. 259 of 2018 and order dated 25-07-2019 passed by this court in WP(C) No. 690 of 2010 squarely covers the issue raised in the present writ petition and that such orders passed by a co-ordinate bench is binding to this court.

[10] Mr. S. Suresh, learned counsel further submitted that in the present petition, the petitioner did not disclosed the existence of the Consent Certificate and Undertaking given by him and approached this court by concealing such material evidences to obtain favourable orders and on this count alone, the present petition is liable to be dismissed. In support of his contention, the learned counsel cited the judgment of the Hon'ble Apex Court in the case of **"K.D. Sharma Vs. Steel Authority of India" reported in (2008) 12 SCC 481** wherein it has been held as under:-

> ***"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim."***
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> ***"36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it."***
>
> ***"38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without***

any qualification. This is because "the court knows law but not facts".

"39. If the primary object as highlighted in Kensington Income Tax Commrs. is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

[11] Mr. Niranjan Sanasam, learned GA appearing for the respondents No. 1 to 4 endorsed the submission made by the learned counsel appearing for the respondent No. 5.

[12] I have heard the submissions advanced by the counsel appearing for the parties at length and also carefully examined all the materials available on record. In my considered view, the only issue which needs to be decided in the present writ petition is whether recovery of the alleged excess payment of pay and allowances from the retiral benefits due payable to the petitioner is permissible in law or not.

[13] The contention of the respondents is that on promotion of the petitioner to the post of ASI, his pay was fixed at Rs. 4,500/- on 21-08-2005 instead of Rs. 4,400/- there being a difference of Rs. 100/- in the fixation of his pay. As a result, consequent upon revision of pay under the Revision of Pay Rules, 2010, the petitioner's pay was fixed at Rs. 8,370 + 2,400/- on 01-01-2006 instead of Rs. 8,190 + 2400/- thereby leading to over-payment to the petitioner more than his entitlement.

[14] On careful examination of the record of the case, this court did not find any material to substantiate the contention of the respondents that the petitioner's pay to the post of ASI was fixed at Rs. 4,500/- on 21-08-2005. Even assuming that the petitioner's pay as ASI was to be fixed at Rs. 4,400/- in 2005, his pay must have been increased to Rs.4,500/- in the year 2006 due to the yearly increment of pay scale as provided under the rules. In the document marked as Annexure -X/1 annexed to the affidavit-in-opposition of the respondent No. 5, the pay scale of the petitioner as ASI as on 01-01-2006 is shown as Rs. 4,500/- and this factum has not been controverted by the respondents. If that is so, there is no substance or truth in saying that consequent upon revision of pay under the ROP Rules, 2010, the petitioner's pay was wrongly fixed at Rs. 8,370 + 2,400/- on 01-01-2006 and that the same has led to over-payment to the petitioner more than his entitlement. Accordingly, this court is of the considered view that no excess payment had been made to the petitioner on account of any wrong fixation of his pay scale at the rank of ASI and that the deduction made by the respondents from the retiral benefits due payable to the petitioner on the said ground is not permissible in law.

[15] The second contention of the respondents is that despite the order dated 07-01-2010 issued by the S.P., Ukhrul, imposing major punishment of withholding the petitioner’s increment with cumulative effect for a period of three years from the date of his suspension, the Department released his full pay and allowances without withholding any increment and this has resulted in over-payment of pay and allowances to the petitioner. In this regard, the contention of the petitioner is that he has no hand or no fault can be attributed to him in releasing the pay and allowances without

withholding any increment in terms of the penalty order dated 07-01-2010 issued by the S.P., Ukhrul. As such, the authorities should not be permitted to recover any excess amount already drawn from the retiral benefits of the petitioner especially after the retirement of the petitioner from service. This court find force and merit in the contention raised on behalf of the petitioner in view of the principle of law laid down by the Hon'ble Apex Court in the case of **"Shyam Babu Verma" (*supra*), "Syed Abdul Qadir" (*supra*), "Rafiq Masih (White Washer)" (*supra*) and "Thomas Daniel" (*supra*).**

[16] So far as the stand of the respondent No. 5 that the deduction had been made on the basis of the Consent Certificate given by the petitioner is concerned, it is to be pointed out that such stand of the respondent No. 5 had already been considered and decided by this court in its judgement and order dated 13-07-2022 passed in WP(C) No. 574 of 2021. The operative portion of the said judgement and order are as under:-

> ***"26. The consent/self-declaration to the effect that the petitioner undertook to deduct overpayment of pay and allowance is concerned, the learned counsel for the petitioner submitted that the petitioner signed in a letter dated 28.9.2011 prepared by the Zonal Education Officer addressed to the Senior Accounts Officer (Pension) thereby consenting to deduct the overpayment resulted in her pay and allowances on account of placement to higher scale of pay so as to enable her to meet her present serious financial hardships."***
>
> ***"27. Normally, if the retiring staff refused to sign in the said letter, the pension proposal could not be processed. Therefore, faced with that situation only, the employee was signing. In this case also, as rightly argued by the learned counsel for the petitioner, the petitioner at that stage is bound to sign the said letter against her will for speedy disposal of her pension proposal. Therefore, plea of the first respondent that based on the consent/self-declaration deduction was made cannot be countenanced."***

[17] The aforesaid judgment and order dated 13-07-2022 passed in WP(C) No. 574 of 2021 had been upheld by a Division Bench of this court in its judgment and order dated 16-12-2022 passed in WA No. 121 of 2022 and also by the Hon'ble Apex Court in its order dated 20-03-2023 passed in SLP (C) No. 4798 of 2023 and the matter has attained finality. In my considered view, the aforesaid judgments of this court and the Hon'ble Apex Court is applicable in the present case and such judgments are binding on this court.

[18] It is well settled that pension is not a bounty, being a hard earned benefits of an employee who has put in long and dedicated service till the age of retirement. The same principle would hold good for other retirement benefits also. It is no doubt true that that writ petitioner gave his consent in the aforesaid Consent Certificate, agreeing to the deduction of any Government dues from his retirement gratuity or from other pension benefits payable to him, however, merely because his consent was given by him did not absolve the authorities from basing such deduction on legally valid and tenable grounds. We should also keep in mind that an employee on the verge of retirement would not be in a position to bargain and would be inclined to give consent so that his or her retirement benefits are processed expeditiously. Therefore, the mere fact that the petitioner gave his consent is not sufficient, in itself, to hold against him and gave the authorities a clean chit for their arbitrary and wholly unsustainable act.

[19] With regard to the contention of the respondent No. 5 that the petitioner did not disclosed the existence of the Consent Certificate given by him and approached this court by concealing such material evidence to

obtain favourable order, it is to be pointed out that at the time of filing the present writ petition, the petitioner had no idea or reason or the ground for the deduction from his retirement gratuity. Only after filing of the counter affidavit by the respondent No. 5, the petitioner came to know about the reason or ground for the said deduction as disclosed in the said counter affidavit. In such a situation, this court is of the considered view that non-mentioning of the said Consent Certificate will not amount to concealment of facts and taking into consideration the facts and circumstances of the present case, as discussed hereinabove, this court is not inclined to dismiss the present writ petition and the grounds raised by the respondent No. 5.

[20] I have also carefully perused the three orders passed by this court in WP(C) No. 258 of 2018, WP(C) No. 259 of 2018 and WP(C) No. 690 of 2010 relied on by the respondent No. 5. In my considered view, nothing has been decided on merit by this court in the said orders. All the said three writ petitions were closed after recording the submission of the learned counsels without deciding anything on merit and as such the said orders are not applicable in the facts and circumstances of the present case.

Taking into consideration the facts and circumstances of the present case and the discussions and the reasons given hereinabove and keeping in view the earlier judgments and orders passed by this court and the Hon'ble Apex Court, this court is of the considered view that the order passed by the respondent No. 5 for deducting the amount of Rs. 1,89,889/- from the retirement gratuity of the petitioner is illegal and unsustainable in

the eyes of law and accordingly, the same is hereby quashed and set aside so far as the order for recovery of the amount is concerned. Resultantly, the respondents are hereby directed to release the deducted amount of Rs. 1,89,889/- to the petitioner as early as possible but not later than two months from the date of receipt of a certified copy of this order.

With the above directions, the writ petition stands allowed. Parties are to bear their own costs.

JUDGE

FR / NFR

Devananda