HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 7031/2019

Gopal Mal Bhandari S/o Late Shri Vijay Mal Bhandari, Aged About 63 Years, Resident Of E-80, Kamla Nehru Nagar, Jodhpur.

----Petitioner

Versus

- 1. The Rajasthan High Court Jodhpur, Through Its Registrar General.
- The Registrar Classification, Rajasthan High Court, Jodhpur.

----Respondents

Connected With

D.B. Civil Writ Petition No. 7035/2019

Dinesh Kumar Gandhi S/o Shri Padam Chand Gandhi, Aged About 63 Years, Resident Of Narsinghdara In Front Of Hanuman Temple, Inside Jalori Gate, Jodhpur.

----Petitioner

Versus

- 1. The Rajasthan High Court Jodhpur, Through Its Registrar General.
- 2. The Registrar Classification, Rajasthan High Court Jodhpur.

----Respondents

D.B. Civil Writ Petition No. 2289/2020

Subhash Bhati S/o Shri Jagdish Bhati, Aged About 61 Years, Resident Of Near Rajmahal Girls Secondary School, Fateh Nagar Ki Nahar (Ajay Chowk) Jodhpur.

----Petitioner

Versus

- 1. Rajasthan High Court, Jodhpur, Through Its Registrar General.
- 2. The Registrar General, Rajasthan High Court, Jodhpur.

----Respondents

D.B. Civil Writ Petition No. 5458/2020

Maqsood Siddiqui S/o Shri Abdul Wajid Siddiqui, Aged About 60 Years, Resident Of Behind Stadium Cinema, Near Laxmi Art Emporium, Jodhpur, At Present Residing At House No. 115/89, Ekta Nagar, Near Purani Masjid, Ramjan Ji Ka Hattha, Banar Road, Jodhpur.

----Petitioner

Versus

- 1. The Rajasthan High Court, Jodhpur, Through Its Registrar General.
- 2. The Registrar Administration, Rajasthan High Court, Jodhpur.

----Respondents

D.B. Civil Writ Petition No. 8165/2020

Devendra Soni S/o Late Shri Tulsi Ram Soni, Aged About 63 Years, Resident Of 81, Devganga Vivekanand Colony, Pal Road, Jodhpur.

----Petitioner

Versus

- 1. The Rajasthan High Court, Jodhpur, Through Its Registrar General.
- 2. The Registrar Classification, Rajasthan High Court, Jodhpur.

----Respondents

For Petitioner(s)

Mr. Sushil Solanki

Mr. Bhavit Sharma

Mr. Rameshwar Chhangani

For Respondent(s)

Dr. Sachin Acharya Mr. Kuldeep Mathur

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI HON'BLE MR. JUSTICE SUDESH BANSAL

Order

29/11/2021

These petitions are filed by the retired employees of the High Court. They have challenged the recoveries raised by the administration which would be effected from their pension.

Facts are similar in all cases. For simplicity, we may record those arising out of writ petition No.7031/2019. The petitioner Gopal Mal Bhandari was appointed in the High Court administration as LDC on 05.04.1976. In the year 2000, he was placed on the post of Court Master from the post of Stamp Reporter. The case of the petitioner is that both the posts, that of

Stamp Reporter and that of Court Master carried the same pay scale and accordingly, his placement as Court Master was not by way of promotion. Despite this, treating his change of post as a promotion, the High Court administration did not grant him the benefit of third ACP. He thereupon filed Civil Writ Petition No.10493/2011 before this Court. The Division Bench of this Court allowed the petition by judgment dated 17.09.2013 holding that while the petitioner was posted as Court Master, the same was not by way of promotion. Resultantly, the petitioner would receive the benefit of third ACP which was denied to him. The High Court administration did not accept this judgment straight away. First appeal was filed before the Supreme Court and thereafter a review petition was filed before the Division Bench. After the SLP was dismissed, the judgment was implemented. On 26.08.2017, the petitioner was granted benefit of third ACP with effect from 06.04.2003. In this order itself, it was clarified that there would be consequential adjustment of pay fixation. Since as urged by the petitioner and as accepted by the High Court, his placement as Court Master was not by way of promotion, the High Court administration correctly believed that the benefit of pay fixation granted to him at that stage in terms of Rule 26A of Rajasthan Service Rules, 1951, i.e. grant of additional increment had to be withdrawn. Surely, the petitioner cannot retain both the benefits namely of pay fixation as a promotion and benefit of third ACP treating the category change not as a promotion. Even the petitioner does not dispute this position. The real problem arose because the High Court administration raised recovery of the over payment of Rs.1,01,187/- by impugned communication dated

10.05.2019. In the meantime, the petitioner had retired with effect from 31.03.2016.

In connected petitions, facts are substantially similar. The amount of recovery and the date of retirement changed. Nevertheless, all petitioners have retired from active service and the recoveries raised against them are in the vicinity of Rs. 1 to 2 lakh.

In background of such facts, in our view, the recoveries could not have been raised. Firstly, all the petitioners have retired from service long before the recoveries were raised. Secondly, it is not even the allegation of the High Court administration that the over payment was on account of any misrepresentation or fraud on the part of the petitioners. In that view of the matter, we need to examine the request of the petitioners in light of the judgment of the Supreme Court in the case of **State of Punjab and others** vs. Rafiq Masih (White Washer) and others reported in (2015) 4 SCC 334. The question of recoveries of over payment from the government employees has received attention of the Supreme Court on numerous occasions. In case of Rafiq Masih (supra) the two Judges of Supreme Court has taken note of earlier decisions and has laid down the following principles:

[&]quot;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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

⁽i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

We are informed that the State of Rajasthan had also issued a circular making similar provisions with respect to recoveries of alleged over payment of salary.

In view of the facts noted above, all the petitions are allowed. The impugned demanding recoveries of over payment of salary are set aside.

(SUDESH BANSAL),J

(AKIL KURESHI),CJ

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