HIGH COURT OF ANDHRA PRADESH

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WRIT PETITION No. 5756 of 2021

Between:

The Commissioner of Police,
Vijayawada City Police, Vijayawada,
Krishna District and 3 others

.....PETITIONERS

AND

P. M. Babji

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **24.06.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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RAVI NATH TILHARI, J

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CHALLA GUNARANJAN, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
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THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

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! Counsel for the Petitioners : Sri R. S. Manidhar Pingali
AGP for Services

Counsel for the Respondent : Sri B. Rajesh Kumar

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> Head Note:

? Cases Referred:

1. (2012) 8 SCC 417
2. (2016) 14 SCC 267
3. (2009) 3 SCC 475
4. (2006) 11 SCC 709
5. (2014) 8 SCC 892
6. (1994) 2 SCC 521
7. 1995 Supp (1) SCC 18
8. (2014) 8 SCC 883
9. (2015) 4 SCC 334
10. 2022 SCC OnLine SC 536

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE CHALLA GUNARANJAN

WRIT PETITION No. 5756 of 2021

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri R. S. Manidhar Pingali, learned Assistant Government Pleader for Services, for the petitioners and Sri B. Rajesh Kumar, learned counsel for the respondent, appearing through virtual mode.

2. The respondent – P. M. Babji was the applicant in O.A.No.2401 of 2017 before the Andhra Pradesh Administrative Tribunal, Hyderabad (in short 'the Tribunal'). The petitioners were the respondents therein.

3. The respondent herein shall be referred to as the 'applicant' and the petitioners as 'petitioners'.

4. The applicant joined in service as Police Constable on 13.07.1984. He submitted his resignation which was accepted with effect from 08.11.1994 by the Commissioner of Police, Vijayawada. Subsequently, he made a representation to the Government in the year 1998 and accepting the request as per the representation, the Government issued G.O.Ms.No.2396, Home (Police-D) Department, dated 30.11.1998, and permitted the applicant to withdraw his resignation on humanitarian grounds as a special case and directed for his reappointment as Police Constable subject to Rule 30 of the Andhra Pradesh State and Subordinate Service Rules, 1996 (in short 'Rules 1996'). At the time of his reappointment, his pay was fixed basing on his last pay i.e., the amount last paid to the applicant prior to his resignation. At the

time of retirmement of the applicant on attaining the age of superannuation, the Commissioner of Police, Vijayawada city passed the Order dated 10.05.2017 in D.O.No.457/2017/C.No.2062/A4/2017 refixing the applicant's pay with effect from 30.06.2017 and while sending the pension papers to the District Audit Officer, State Audit, Krishna, Machilipatnam, Commissioner of Police, Vijayawada city, vide his letter dated 25.06.2017 informed that the applicant's pay was refixed and the applicant had to pay Overdraft (in short 'OD') amount of Rs.12,34,303/-, which was asked to be deducted from his gratuity, commutation and pension.

5. Questioning the aforesaid action, the applicant filed O.A.No.2401 of 2017.

6. Petitioners filed their counter in the O.A. Their case was that refixation of the applicant's pay on his reappointment was under mistake. The applicant was not entitled for refixation of pay, giving the benefit of the previous service, prior to resignation, but it being reappointment subject to Rule 30 of the Rules 1996, the service rendered prior to resignation shall be forfeited under the Government. The reappointment was to be treated as first appointment. That mistake was corrected and the applicant's pay was refixed, vide Order dated 10.05.2017 for grant of pension and other benefits and the excess amount paid was to be recovered.

7. The Tribunal allowed the O.A.2401 of 2017 vide judgment dated 26.10.2017. It provided that so far as the fixation of pension was concerned, the applicant would be entitled for fixation of retiral benefits and pension on the

basis of last drawn pay as refixed in the proceedings dated 10.05.2017, but so far as the direction by the Authority to the applicant to pay O.D. amount of Rs.12,34,303/- was concerned, the said direction could not be issued by the authorities. The Tribunal directed the petitioners not to make any recovery of the said amount from out of the retiral benefits of the applicant.

8. Challenging the aforesaid Order, dated 26.10.2017 of the Tribunal, the petitioners had filed the present writ petition.

9. Learned counsel for the petitioners submitted that the applicant was not entitled for the pay in the scale fixed at the time of reappointment, which was erroneously fixed taking into account the past service of the applicant, though that service was not to be counted in terms of Rule 30 of the Rules 1996 and the reappointment was fresh appointment. The benefits of the previous service was not to be given. That mistake was sought to be corrected at the time of the superannuation of the applicant, vide Order dated 10.05.2017 by refixing the pay, correctly, and consequently, the direction to recover the excess amount was issued from the retiral benefits of the applicant. He submitted that the Tribunal ought to have considered the Rule 30 of the Rules 1996 that the reappointment was fresh appointment and consequently, the excess amount paid to the applicant was liable to be recovered. Learned counsel for the petitioners placed reliance in the cases of ***Chandi Prasad Uniyal v. State of Uttarakhand***[1] and ***High Court of Punjab and Haryana v. Jagdev Singh***[2].

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[1] (2012) 8 SCC 417
[2] (2016) 14 SCC 267

10. Sri B. Rajesh Kumar, learned counsel for the applicant, submitted that the excess amount paid to the applicant, could not be recovered. He submitted that the applicant belonged to Group-D Service and was due to retire with effect from 30.06.2017. Consequently, the Order dated 10.05.2017 was within one year from the due date of retirement. So, no illegality was committed by the Tribunal in allowing the O.A.

11. We have considered the aforesaid submissions and perused the material on record.

12. The point for consideration and determination is,

"Whether the excess amount paid to the applicant due to wrong refixation of pay could be recovered from him?"

13. The legal position on the aforesaid issue is well settled by Catena of judgments of the Hon'ble Apex Court.

14. The Hon'ble Apex Court in ***Chandi Prasad Uniyal*** (supra) held that except few instances pointed out in ***Syed Abdul Qadir v. State of Bihar***[3] and in ***Col. B. J. Akkara v. Govt. of India***[4], the excess payment made due to wrong / irregular pay fixation can always be recovered.

15. From the aforesaid judgment in ***Chandi Prasad Uniyal*** (supra) it is clear that, except in the exceptional categories of cases, as in ***Syed Abdul Qadir*** (supra) and ***Col. B. J. Akkara*** (supra), the excess payment can always be recovered. Consequently, in exceptional categories of case, the same cannot be recovered.

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[3] (2009) 3 SCC 475
[4] (2006) 11 SCC 709

16. In ***Syed Abdul Qadir*** (supra) the excess amount had been paid to the teachers not because of any misrepresentation or fraud on their part and the appellants therein also had no knowledge that the amount that was being paid to them was more than what they were entitled to. In the said case the Finance Department 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 teachers could not be held responsible.

17. In ***Col. B. J. Akkara*** (supra), the Hon'ble Apex Court held as under in Para Nos. 27 to 29:

"***Re: Question (iv)***

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."

18. Later on, in ***Rakesh Kumar v. State of Haryana***[5] the Hon'ble Apex Court being of the view that there was an apparent difference of views expressed, on the one hand in ***Shyam Babu Verma v. Union of India***[6] and

[5] (2014) 8 SCC 892
[6] (1994) 2 SCC 521

Sahib Ram v. State of Haryana[7] and on the other hand in ***Chandi Prasad Uniyal*** (supra), made a reference to the Larger Bench.

19. In ***State of Punjab v. Rafiq Masih***[8] the Larger Bench of the Hon'ble Apex Court observed that the reference was unnecessary. It was observed that in ***Shyam Babu Verma*** (supra) while observing that the petitioners therein were not entitled to the higher pay scales, had come to the conclusion that since the amount had already been paid to those petitioners, for no fault of theirs, the said amount shall not be recovered by the Union of India. In ***Sahib Ram*** (supra) also 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. That was not on account of misrepresentation made by the appellant therein but by a mistake committed by the principal. In that fact situation, the amount already paid to the appellant was directed not to be recovered. The Hon'ble Apex Court in ***Rafiq Masih*** (supra-1) observed that the observations made in those cases not to recover the excess amount paid was in the exercise of extraordinary powers of the Hon'ble Apex Court under Article 142 of the Constitution of India, which vest the power in the Supreme Court to pass equitable orders in the ends of justice.

20. The Hon'ble Apex Court in ***Rafiq Masih*** (supra-1) further observed that, in ***Chandi Prasad Uniyal*** (supra), the issue was whether the appellant therein could retain the amount received on the basis of irregular / wrong pay fixation in the absence of any misrepresentation or fraud on his part, and after

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[7] 1995 Supp (1) SCC 18
[8] (2014) 8 SCC 883

taking into consideration the various decisions of the Hon'ble Apex Court, it was held that even if by mistake of the employer the amount was paid to the employee and on a later date if the employer after proper determination of the same discovered that the excess payment was made by mistake or negligence, the excess payment so made could be recovered. The Larger Bench of the Hon'ble Apex Court in ***Rafiq Masih*** (supra-1) held that the law laid down in ***Chandi Prasad Uniyal*** (supra) was in no way in conflict with the observations made in the cases of ***Shyam Babu Verma*** (supra) and ***Sahib Ram*** (supra). The decision in ***Chandi Prasad Uniyal*** (supra) was under Article 136 of the Constitution of India, in laying down the law.

21. In ***State of Punjab v. Rafiq Masih***[9] , i.e., the judgment after the matter was sent back to the concerned Benches pursuant to the Order in reference in ***Rafiq Masih*** (supra-1), the Hon'ble Apex Court held that it was not possible to postulate all situations of hardship which would govern employees on the issue of recovery made by the employer in excess of their entitlement.

22. The Hon'ble Apex Court in ***Rafiq Masih*** (supra-2) summarized in para-18, the following few situations, wherein recoveries by the employers, were held to be impermissible in law:

> "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,

[9] (2015) 4 SCC 334

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."

23. In ***Jagdev Singh*** (supra), the Hon'ble Apex Court referred to its judgment in ***Rafiq Masih*** (supra-2) in para-10 thereof that in those situations as in para-10 of ***Rafiq Masih*** (supra-2), a recovery by the employer would be impermissible in law.

24. In ***Thomas Daniel v. State of Kerala***[10] the Hon'ble Apex Court observed that an attempt to recover the excess increments after passage of ten years of retirement was unjustified. In the said case, it was also not contended that on account of any misrepresentation or fraud played by the appellant therein, the excess amount was paid. In fact, the case of the respondents therein was that the excess payment was made due to mistake in interpreting

[10] 2022 SCC OnLine SC 536

Kerala Service Rules, which was subsequently pointed out by the Accountant General.

25. Paragraphs – 14 & 15 of ***Thomas Daniel*** (supra) read as under:

> "**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**."

26. We would consider whether the present case falls within the exceptions as pointed out in ***Syed Abdul Qadir*** (supra) and ***Col. B. J. Akkara*** (supra) or / and ***Rafiq Masih*** (supra-2) and then whether the excess payment due to wrong or irregular pay fixation can or cannot be recovered.

27. We are of the view that the case of the applicant is covered and falls within the instances of ***Syed Abdul Qadir*** (supra), ***Col. B. J. Akkara*** (supra) and in clauses (i) & (ii) of para-18 of ***Rafiq Masih*** (supra-2), if not in other clauses. We are of the further view that at this stage, it would be iniquitous or harsh to allow the petitioners to recover the excess payment from the respondent.

28. Rule 30 of the Rules 1996 upon which learned counsel for the petitioners laid emphasis, deals with 'resignation'. Sub-rule (b) of Rule 30 of the Rules 1996 provides *inter alia* that if the person is permitted to withdraw his

resignation after it has taken effect and is reappointed to the post from which he resigned, such reappointment shall be subject to the conditions specified in Sub-Rules (c) and (d). As per sub-rule (c), a member of service shall, if he resigns his appointment, forfeit not only the service rendered by him in the particular post held by him at the time of resignation but all his previous service under the Government. As per sub-rule (d), the reappointment shall be treated in the same way as a first appointment to such service by direct recruitment and all rules governing such appointment shall apply, and on such reappointment he shall not be entitled to count any portion of his previous service for any benefit or concession admissible under any rule or order.

29. So far as the aforesaid Rule 30 of the Rules 1996 is concerned, this was required to be seen by the authorities at the time of reappointment while refixation of the pay scale. It is not the case of the petitioners that the applicant played any role or committed any fraud in getting wrong fixation. The fixation of pay scale was made by the authorities, may be in ignorance of Rule 30 at that time or on a wrong consideration of such rule and when it was realized that the fixation was incorrectly made they had right to correct, but any excess amount paid, could not be recovered, in view of the law as laid down in ***Rafiq Masih*** (supra-2), ***Jagdev Singh*** (supra) and ***Thomas Daniel*** (supra). Rule 30 of the Rules 1996 is therefore of no help to the petitioners for the purposes of the recovery of the excess amount paid to the applicant.

30. Learned counsel for the petitioners laid much emphasis in para-11 of ***Jagdev Singh*** (supra) to contend that the proposition No.(ii) as laid down in

Rafiq Masih (supra-2) cannot be applied to the situation where the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. In the said case, the officer had furnished an undertaking while opting for the revised pay scale. The Hon'ble Apex Court held that the officer was bound by the undertaking.

31. Paras-10 and 11 of ***Jagdev Singh*** (supra) are reproduced as under:

"**10.** In *State of Punjab* v. *Rafiq Masih* [*State of Punjab* v. *Rafiq Masih*, (2015) 4 SCC 334 : (2015) 2 SCC (Civ) 608 : (2015) 2 SCC (L&S) 33] this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law : (SCC pp. 334-35)

(*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.

(emphasis supplied)

11. The principle enunciated in Proposition (*ii*) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any

payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

32. Learned Counsel for the petitioners emphasized that in the present case also the applicant had undertaken that any payment found to be made in excess would be required to be refunded. The applicant had also undertaken for the refixation of his pay at the time of superannuation with his consent.

33. There is no dispute on the proposition of law that at the time of refixation, if it was made erroneously on the higher side and the payment was made to an officer or employee and he had undertaken at that time that any payment found to have been made in excess would be required to be refunded, such officer or employee would be liable to pay excess paid to him and that he cannot resile from the undertaking, if it is found subsequently that an excess payment was paid, to which, officer or employee was not entitled for payment on the refixation of the pay which was on the higher side and made erroneously. But here any such undertaking of the applicant at the time of the fixation of his pay at the time of his reappointment after resignation could not be placed before us. It is not even the case of the petitioners in the writ petition that any such undertaking at that time i.e., in the year 2018 when the reappointment was made, was given by the applicant. The pleading in the writ petition (para-8) as also the argument advanced based on such pleading is that after noticing the mistake that erroneous pay fixation (on reappointment) was made, the presence of the applicant was obtained on 08.05.2017 and he was explained about the erroneous pay fixation of his pay and then only after

obtaining the consent of the applicant the pay was revised by D.O.No.457/2017 in C.No.2062/A4/2017, dated 10.05.2017. We are of the view that such a consent of the applicant for refixation at the time of his superannuation because of the erroneous pay fixation at the time of his reappointment, cannot be considered to be consent for recovery of the excess amount already paid. There is no pleading that the applicant consented for recovery of the excess amount paid. The consent for refixation at the time of retirement by rectifying the mistake would at best be for pensionary benefits to be determined based on such correct refixation on attaining the age of superannuation. We also find that the applicant did not challenge the refixation vide Order dated 10.05.2017 in O.A., but only the recovery part of the excess amount. The Tribunal also directed to fix the pensionary benefits and pay the same pursuant to the refixation Order dated 10.05.2017. The applicant has not challenged that part of the Order of the Tribunal. Consequently, so far as the recovery of the excess amount paid is concerned, it cannot be said that the applicant consented for recovery of the excess amount.

34. Any document has not been placed on record before us either to show that at the time of fixation of the pay scale of the applicant at the time of his reappointment, he gave any such undertaking nor that at the time of refixation of the pay, correctly, at the time of superannuation vide Order dated 10.05.2017, the applicant consented for recovery of excess amount due to wrong fixation of salary. We do not find any force in the submission of the petitioners' counsel on the above count. The judgment in ***Jagdev Singh***

(supra) is therefore not attracted so as to justify recovery from the applicant on any such ground of the applicant's undertaking. In ***Jagdev Singh*** (supra) the officer had furnished the undertaking while opting for the revised pay scale as is evident from para-11 of the judgment.

35. The excess amounts paid to the applicant/respondent, in our view, cannot be recovered.

36. We do not find any illegality in the order of the Tribunal directing the petitioners not to recover the excess payment made to the applicant. We do not find any reason or justification to interfere with the order of the Tribunal.

37. The Writ Petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

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RAVI NATH TILHARI, J

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CHALLA GUNARANJAN, J

Date: 24.06.2025
Dsr

Note:
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