

(2016) 12 JH CK 0071

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1631 of 2016

Ashok Kumar Mandal

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 JBCJ 246 : (2017) 2 JCR 76 : (2017) 1 JLJR 424

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Gautam Rakesh, Advocate, for the Respondent in J.C to A.G in W.P. No. 2251 of 2016; M/s Rupesh Singh and Amrendra Pradhan, Advocates, for the Petitioners in W.P.(S) Nos. 1631, 1648, 1649, 1784, 1786, 1838, 2038, 1783, 2054, 2149, 2251 and 2448 of 2016

Final Decision : Allowed

Judgement

Pramath Patnaik, J. - Since identical prayers has been made in the aforesaid writ applications, with the consent of respective counsels all the aforesaid cases have been heard analogously and are being disposed of by this common order.

In W.P.(S) No.1631 of 2016, the petitioner has inter alia prayed for quashing the office order containing letter dated 02.02.2016 and communicated vide memo dated 06.02.2016 (Annexure-6) whereby an order of recovery of Rs.1,77024/- has been passed, which has been impugned in the said writ application on the ground of breach of cardinal principles of natural justice.

Sans details the facts as disclosed in the said writ application is that in the year, 1983, the petitioner was appointed as Science Teacher and in the year, 1991 after being sent for In service training the petitioner acquired the training. In the year, 1995 the petitioner was granted the scale of Rs.1640- 2900/- w.e.f 25.07.1991 i.e. the date on which he acquired the training. In the year, 2001 in the 5th pay revision scale of pay, the petitioner scale was revised in the scale of Rs.5500-9000/- w.e.f. 01.01.1996. The petitioner was also granted senior scale

of pay of Rs.6500-10500/- on completion of 12 years i.e. w.e.f. 25.07.2003. In the year, 2009 in the 6th pay revision, the pay scale of the petitioner was revised in the scale of Rs.9300-34800/- P.B II which is the replacement scale of Rs.5500-9000/- w.e.f. 01.01.2006 but the actual benefits was given on 01.04.2007. On 06.02.2016 the petitioner was served memo no.118 dated 06.02.2016 communicating the order contained in letter no.93 dated 02.02.2016 directing for compulsory recovery amounting of Rs.1,77,024/- in Government treasury.

2. In W.P.(S) No.1410 of 2016, the petitioner has sought for quashing the order issued vide letter dated 10.02.2016 (Annexure-5) whereby a show cause notice has been served upon the petitioner by respondent no.6, asking as to why a recovery of Rs.1,84,206/- may not be made from him, which has been issued on the basis of order of recovery issued by respondent no.5 vide letter dated 23.10.2015 (Annexure-4) on the basis of audit report. The petitioner has also sought for quashing of letter dated 23.10.2015 (Annexure- 4).

The brief facts emanated from the writ application is that the petitioner was appointed as Bachelor of Science untrained teacher on 15.03.1983. The petitioner participated in the training session of science graduate teacher, being session 1988-89, in which the petitioner was qualified and his date of passing was 24.06.1992. In the year, 1995 the petitioner has been granted the scale of pay of B.Sc trained scale. To the utter surprise, in pursuance to Audit Report No. 104/2014-15 and Letter No.179 dated 18.08.2015, issued by respondent no.7, the respondent authorities issued a letter dated 23.10.2015 by directing the process of recovery. In pursuance to letter dated 23.10.2015, the principal of the school, respondent no.5 has issued a show cause upon the petitioner for recovery from the pay of the petitioner. The recovery of Rs.1,84,206/- vide letter dated 10.02.2016 is impugned in this writ application.

3. In W.P.(S) No.1645 of 2016, the petitioner has prayed for quashing the impugned letter dated 23.10.2015 (Annexure-8) issued by the District Superintendent of Education, Saraikella Kharsawan so far as it relates to the petitioner, by which the amount of Rs.3,34,466/- has been ordered to be recovered, on the basis of the Audit Report of Deputy Secretary Cum Accounts Controller Finance (Audit) Department, Jharkhand Ranchi and the petitioner has further prayed for quashing the impugned consequential letter dated 04.11.2015 and letter dated 10.02.2016 (Annexure-9 & 10) issued by the Block Education Extension Officer, Gamaharia and Head Master Cum Drawing and Disbursing Officer, Middle School Krishapur, Gamaharia in compliance of the impugned letter dated 23.10.2015 (Annexure-8). The petitioner has further prayed for issuance of writ of mandamus commanding upon the respondents to make payment of post retiral benefits including the amount of pension, gratuity, commutation of pension and leave encashment etc.

The facts as disclosed in the writ application in a nutshell is that the petitioner was appointed as Assistant Teacher vide office letter dated 21.02.1983 issued by

the District Superintendent of Education, Singbhum, Chaibasa. Thereafter, the petitioner acquired the teachers training qualification issued by the Secretary, Bihar School Examination Board on 05.01.1993. Thereafter, the petitioner was granted B.Sc. trained pay-scale. On account of 12 years of satisfactory service, the pay-scale was granted for the petitioner 1st time bound promotion w.e.f 16.03.2004. The petitioner after attaining the age of 60 years got superannuated from service w.e.f 31.01.2016 on B.Sc. trained pay scale. After retirement, the petitioner has received the impugned letter dated 23.10.2015 issued by the District Superintendent of Education, Saraikella Kharsawan along with a list of teachers wherein an amount of Rs.3,34,466/- has been shown to be recoverable for the period from March, 1992 to March, 2012. The aforesaid impugned letter was received along with letter dated 04.11.2015 and letter dated 10.02.2016 issued by the Block Education Extension Officer, Gamharia and Head Master Cum Drawing and Disbursing Officer, Middle School, Krishnapur, Gamaharia respectively vide Annexures 8, 9 and 10 of the writ application. After receipt of the aforesaid letter, the petitioner submitted his representation dated 11.03.2016 vide Annexure-11 to the writ application.

4. In W.P.(S) No.1648 of 2016, the petitioner has prayed for quashing the office order contained in letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo no.118 dated 06.02.2016 (Annexure-7) pertaining to recovery of Rs.1,76,978/-.

The brief facts as disclosed in the writ application is that the petitioner was appointed as Science Teacher in the year, 1983 and the petitioner was sent for In-service training which he acquired in the year, 1992. In the year, 2007, the petitioner was granted the trained scale of pay w.e.f 24.06.1992 the date on which he acquired the training in compliance to the order of the Hon'ble Court. In the 5th pay revision was revised in the scale of Rs.5500- 9000/- w.e.f. 01.01.1996 and in the year, 2007 the petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years i.e. w.e.f 24.06.2004. In the year, 2009, in the 6th pay revision the pay scale of the petitioner was revised in the scale of Rs.9300-34800/- P. B II which is the replacement scale of Rs.5500-9000/- w.e.f. 01.01.2006. But the actual benefit was extended to 01.04.2007, surprisingly vide memo dated 06.02.2016 the petitioner was communicated the order containing in letter no.93 dated 02.02.2016 directing for compulsory recovery amounting to Rs.1,76,978/- from Government treasury, which is impugned in this writ application.

5. Then, in W.P.(S) No.1649 of 2016, the petitioner has prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo no.118 dated 06.02.2016 vide Annexure-5 pertaining to recovery of Rs.1,76,978/-.

The brief facts as disclosed in the writ application is that the petitioner was initially appointed as Science Teacher in the year, 1983 and after acquiring In-service training in the year, 1992, petitioner was granted trained scale of pay

from the date of acquiring the training qualification. Thereafter, in 5th pay revision, the petitioner was revised in the scale of Rs.5500-9000/- w.e.f 01.01.1996. The petitioner was granted senior scale of pay of Rs.6500- 10500/- on completion of 12 years. In the 6th pay revision, the pay scale of the petitioner was revised in the scale of Rs.9300-34800/ P. B II which is the replacement scale of Rs.5500-9000/- w.e.f 01.01.2006 but the actual monetary scale was extended from 01.04.2007. But the utter surprise and consternation on 06.02.2016, the petitioner was serviced memo communicating the order containing in letter no.93 dated 02.02.2016 for recovery of amounting to Rs.1,76,978/- in Government treasury.

6. In W.P.(S) No.1784 of 2016, the petitioner has inter alia prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo dated 06.02.2016 (Annexure-6) pertaining to recovery of Rs.1,76,935/-.

The brief facts that the petitioner was appointed as Science Teacher and after acquiring In-service training in the year 1992, petitioner was granted trained scale of pay w.e.f 24.06.1992 i.e. the date on which he acquired the training. Thereafter, in the 5th pay revision, the scale of the petitioner was revised in the scale of Rs.5500-9000/- w.e.f 01.01.1996. In the year, 2006 the petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years w.e.f 24.06.2004. In the 6th pay revision, the petitioner was revised in the scale of Rs.9300-34800/- P.BII which is the replacement scale of Rs.5500-9000/- w.e.f 01.01.2006 but the monetary benefits was given from 01.04.2007.

7. In W.P.(S) No.1786 of 2016, the petitioner has inter alia prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo dated 06.02.2016 (Annexure-6) pertaining to recovery of Rs.1,77,604/-.

The brief facts that the petitioner was appointed as Science Teacher and after acquiring In-service training in the year 1992, petitioner was granted trained scale of pay w.e.f 24.06.1992 i.e. the date on which he acquired the training. Thereafter, in the 5th pay revision, the scale of the petitioner was revised in the scale of Rs.5500-9000/- w.e.f 01.01.1996. In the year, 2006 the petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years w.e.f 24.06.2004. In the 6th pay revision, the petitioner was revised in the scale of Rs.9300-34800/- P.BII which is the replacement scale of Rs.5500-9000/- w.e.f 01.01.2006 but the monetary benefits was given from 01.04.2007.

8. In W.P.(S) No.1838 of 2016, the petitioner has inter-alia prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo dated 06.02.2016 (Annexure-5) pertaining to recovery of Rs.1,77,344/-.

The brief facts that the petitioner was appointed as Science Teacher and after acquiring In-service training in the year 1992, petitioner was granted trained

scale of pay w.e.f 24.06.1992 i.e. the date on which he acquired the training. Thereafter, in the 5th pay revision, the scale of the petitioner was revised in the scale of Rs.5500-9000/- w.e.f 01.01.1996. In the year, 2006 the petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years w.e.f 23.06.2004. In the 6th pay revision, the petitioner was revised in the scale of Rs.9300-34800/- P.BII which is the replacement scale of Rs.5500-9000/- w.e.f 01.01.2006 but the monetary benefits was given from 01.04.2007.

9. In W.P.(S) No.2038 of 2016, the petitioner has inter-alia prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo dated 06.02.2016 (Annexure-2) pertaining to recovery of Rs.2,80,290/-. The petitioner has further prayed for direction upon the respondents to pay retiral benefits such as pension, gratuity, provident fund, leave encashment, group insurance e.t.c along with statutory interest.

The brief facts that the petitioner was appointed as Science Teacher and after acquiring In-service training on 08.09.1979, petitioner was granted trained scale of pay w.e.f 08.09.1979 i.e. the date on which he acquired the training. Thereafter, in the 5th pay revision, the scale of the petitioner was revised in the scale of Rs.5500-9000/- w.e.f 01.01.1996. In the year, 2006 the petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years w.e.f 01.04.1998. In the 6th pay revision, the petitioner was revised in the scale of Rs.9300-34800/- P.BII which is the replacement scale of Rs.5500-9000/- w.e.f 01.01.2006 but the monetary benefits was given from 01.04.2007. The petitioner superannuated from Middle School, Dalaikela, Kharsawan on 28.02.2015 but till date neither the retiral benefits nor pension has been paid.

10. In W.P.(S) No.1783 of 2016, the petitioner has inter alia prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo dated 06.02.2016 (Annexure-7) pertaining to recovery of Rs.5,08,378/-.

The brief facts that the petitioner was appointed as Science Teacher and after acquiring In-service training in the year 1985, the petitioner was granted trained scale of pay w.e.f 01.02.1985 i.e. the date on which he acquired the training in the light of order passed in C.W.J.C No.837/1990 (R) dated 18.01.1991. Thereafter, in the 5th pay revision, the scale of the petitioner was revised in the scale of Rs.5500-9000/- w.e.f 01.01.1996. In the year, 2006 the petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years w.e.f 01.02.1997. In the 6th pay revision, the petitioner was revised in the scale of Rs.9300-34800/- P.BII which is the replacement scale of Rs.5500-9000/- w.e.f 01.01.2006 but the monetary benefits was given from 01.04.2007.

11. In W.P.(S) No.2054 of 2016, the petitioner has inter alia prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo dated 06.02.2016 (Annexure-4) pertaining to recovery of Rs.4,23,983/-.

The brief facts that the petitioner was appointed as Science Teacher in middle school Nimdih, Singhbhum Chaibasa now Saraikela Kharswan, the petitioner was granted the scale of pay w.e.f 01.04.1984. Thereafter, in the 5th pay revision, the scale of the petitioner was revised in the scale of Rs.5500- 9000/-. The petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years w.e.f 01.04.1996. In the 6th pay revision, the petitioner was revised in the scale of Rs.9300-34800/- P.BII which is the replacement scale of Rs.5500-9000/- w.e.f 01.01.2006.

12. In W.P.(S) No.2149 of 2016, the petitioner has inter-alia prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo dated 06.02.2016 (Annexure-3) pertaining to recovery of Rs.1,66,898/-.

The brief facts that the petitioner was appointed as Science Teacher and after acquiring In-service training in the year 1992, petitioner was granted trained scale of pay w.e.f 24.06.1992 i.e. the date on which he acquired the training. Thereafter, in the 5th pay revision, the scale of the petitioner was revised in the scale of Rs.5500-9000/- w.e.f 01.01.1996. In the year, 2004 the petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years. In the 6th pay revision, the petitioner was revised in the scale of Rs.9300-34800/- P.BII which is the replacement scale of Rs.5500-9000/- w.e.f 01.01.2006 but the monetary benefits was given from 01.04.2007.

13. In W.P.(S) No.2251 of 2016, the petitioner has inter-alia prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo dated 06.02.2016 (Annexure-4) pertaining to recovery of Rs.4,94,714/-. The petitioner has further prayed for direction upon the respondents to pay retiral benefits such as pension, gratuity, provident fund, leave encashment, group insurance e.t.c along with statutory interest.

The brief facts that the petitioner was appointed as Science Teacher and after acquiring In-service training in the year 1988, petitioner was granted trained scale of pay w.e.f 14.07.1988 i.e. the date on which he acquired the training. Thereafter, in the 5th pay revision, the scale of the petitioner was revised in the scale of Rs.5500-9000/- w.e.f 01.01.1996. In the year, 2000 the petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years. In the 6th pay revision, the petitioner was revised in the scale of Rs.9300-34800/- P.BII which is the replacement scale of Rs.5500-9000/- w.e.f 01.01.2006 but the monetary benefits was given from 01.04.2007. The petitioner superannuated from the service but till date neither the retiral benefits nor pension has been released.

14. In W.P.(S) No.2448 of 2016, the petitioner has inter alia prayed for quashing the office order containing letter no.93 dated 02.02.2016 and communicated to the petitioner vide memo dated 06.02.2016 (Annexure-3) pertaining to recovery of Rs.1,82,040/-. The petitioner has further prayed for direction upon the

respondents to pay retiral benefits such as pension, gratuity, provident fund, leave encashment, group insurance e.t.c along with statutory interest.

The brief facts that the petitioner was appointed as Science Teacher and after acquiring In-service training on 16.03.1992, the petitioner moved before this Hon"ble Court in W.P(S) No.941 of 2007 for grant of trained scale of pay and the Court was pleased to direct the District Education Establishment Committee vide order dated 05.04.2007 to consider the case of the petitioner and pass a reasoned order. Thereafter, the petitioner was granted trained scale of pay w.e.f 16.03.1992 i.e. the date on which acquired the training. Thereafter, in the 5th pay revision, the scale of the petitioner was revised in the scale of Rs.5500-9000/- w.e.f 01.01.1996. In the year, 2007, the petitioner was granted senior scale of pay of Rs.6500-10500/- on completion of 12 years. In the 6th pay revision, the petitioner was revised in the scale of Rs.9300-34800/- P.BII which is the replacement scale of Rs.5500-9000/- w.e.f. 01.01.2006 but the monetary benefits was given from 01.04.2007. The petitioner superannuated from the service but till date neither the retiral benefits nor pension has been paid.

15. Learned counsel for the petitioner in W.P(S) Nos. 1631, 1648, 1649, 1784, 1786, 1838, 2038, 1783, 2054, 2149, 2251 and 2448 of 2016 have strenuously urged that the action of the respondents basing on the audit objection in directing the recovery from the pay of the petitioners sans legal permissibility on the ground that the scale of pay which have been paid to the petitioners for decades are being sought to be unilaterally disturbed by the respondents on the ground of audit objection. Even otherwise, under the common rule governing monetary issues, no recovery process is permissible after lapse of 3 years. Learned counsel for the petitioners further submits that relevant scale of pay drawn by the petitioners was approved by the competent authorities and there is no element of fraud or misrepresentation on the part of the petitioners. Learned counsel for the petitioners further submits that the law laid down by this Court in the case of Arbind Bhushan Dey and others v. State of Jharkhand & Ors. and analogous cases reported in 2009(1) JCR 513 is squarely applicable in the case of the petitioners wherein it has been held that on acquisition of qualification of training, the person would be entitled to draw the trained scale. Learned counsel for the petitioners further submits that the recovery which has been sought for to be made on the audit objection cannot be legally permissible without adhering due process of law. In this respect, learned counsel for the petitioner has referred to the decision reported in (2003) 11 SCC 465 at paragraph no.18, (2009) 3 SCC 475 at paragraph nos.58, 59 & 60, (2006) 9 SCC 630 and reported in (2015) 4 SCC 334 in the case of State of Punjab and others v. Rafiq Masih (White Washer) And Others.

16. Learned counsel for the petitioner in W.P(S) No.1410 of 2016 has vehemently submitted that the issue relating to pay scale on acquisition of requisite qualification has already been settled in C.W.J.C No.2115 of 2001 in the case of Birendra Kumar Sinha and others v. The State of Jharkhand and others,

which has been approved in L.P.A No.33 of 2012 and the principle of equal pay for equal work has been decided in the case of Arbind Bhushan Dey and others v. The State of Jharkhand and others, reported in 2009 (1) JLR 338. But the respondents by unilateral decision have directed for recovery from the pay of the petitioner basing on the audit objection which is neither conclusive nor sacrosanct, therefore, the action of the respondents is contrary to the aforesaid Principle of law.

17. Learned counsel for the petitioner in W.P.(S) No.1645 of 2016 has vehemently submitted that the decision of the respondents by reducing the pay-scale of petitioner from B.Sc trained to Matric trained amounts to reduction in rank and against the rules and regulation of the department. Learned counsel for the petitioner further submits that the impugned order of recovery is in the teeth of ratio laid down by the Hon'ble Apex Court in catena of decisions. Learned counsel for the petitioner further submits that the impugned order is in flagrant violation of the principle of natural justice. Learned counsel further submits that the issue has been decided by this Court in W.P.(S) No. 5134 of 2001 which has been confirmed by L.P.A No.142 of 2014 wherein the recovery order in pursuance to reduction has been quashed by this Court and the said decision is squarely applicable to the case of petitioner. Learned counsel for the petitioner further submits that the action of the respondents in directing recovery from the pay of the petitioner basing on the audit report is in contrary to decision as reported in 2009 (1) JCR 513 (Jhr).

18. Counter-affidavit has been filed on behalf of respondents wherein it has been submitted that on completion of teacher's training, the trained scale of pay has been granted by the District Superintendent of Education, Chaibasa, who is not empowered to grant the said scale because the District Education Establishment Committee is empowered to grant Graduate Science Trained Teacher Scale and the said scale was wrongly granted by the District Superintendent of Education. The special audit team which was constituted to audit the pay fixation of teachers posted in the District Seraikella-Kharsawan and after due examination of relevant papers and documents, rules, orders and direction of the State Government, the said special audit team submitted its audit report no.104/14-15. The Deputy Secretary, Finance (Audit) Department, Jharkhand by letter no.179 dated 18.08.2015 has directed the District Superintendent of Education, Searaikella-Kharsawan to remove the defects/objections and to comply the observation and directions contained in the aforesaid audit report, which has been annexed as Annexure-A to the counter-affidavit. The respondent no.3, District Superintendent of Education, Seraikella-Kharsawan by letter no.1887 dated 23.10.2015 in compliance of the aforesaid order as contained in the aforesaid letter dated 18.08.2015, has issued a letter to all Drawing and Disbursing Officer of the District with a list of teachers from whom, the order of recovery has been directed to be made and the District Superintendent of Education, Seraikella-Kharsawan vide letter dated 02.02.2016 issued a reminder to all Drawing and Disbursing Officer of the district and the respondent no.4 has

circulated the aforesaid letter by memo dated 06.02.2016 to the petitioner and all concerned. Therefore, according to findings of the audit report, the recoverable amount have been directed to be recovered from the petitioners. Hence, actions of the respondents can be construed to be illegal or unauthorized or unjustified.

19. Having heard rival submissions and having given anxious consideration to the facts and circumstances of the case and the documents on record, I am of the considered view that the petitioners in the aforesaid writ applications have made out foundational facts to warrant interference by this Court due to the following facts and reasons:-

(I) The writ petitioners in different writ applications were initially appointed as Science Teachers. All the petitioners except petitioner in W.P.(S) No.2054 of 2016 were untrained at the time of joining in service but subsequently they were sent for their In-service training and after acquiring training qualification. In pursuance to their acquisition of their training, they were granted trained scale. Subsequently, they were granted 5th scale of pay and 6th pay revision. By virtue of completion of 12 years, petitioners were also granted senior scale of pay. But to the utter surprise and consternation the respondents basing on the audit objection report have directed in the impugned orders for recovery of substantial amounts from the pay of the petitioners without any notice or show cause which have been impugned in these writ applications.

(II) All the petitioners in the aforesaid writ applications have worked for several years and the petitioners in W.P.(S) Nos.2448 of 2016, 2251 of 2016, 2038 of 2016 and 1645 of 2016 have already retired from services and others are on the verge of superannuation. During the period of their services, the petitioners served honestly, diligently to the best satisfaction of the respondents and no show cause has been issued to the petitioner for any misconduct or unblemished. In the case of Arbind Bhushan Dey & Ors. v. State of Jharkhand & Ors. reported in 2009 (1) JLR 338 and batch of cases reported in 2009 (1) JCR 513 (Jhr) where it has been inter alia held that the 1993 Rules cannot be said to be retrospective in nature in order to defeat the vested right of a person and the trained scale is an admissible from the date of acquisition of teachers training. In the case in hand, the petitioners having granted trained scale from the date of acquisition of teachers training, therefore, there is absolutely no infirmity in grant of trained scale to the petitioners on the date of acquisition of teachers training. Moreover, the unilaterally and ex parte order basing on the audit report to recover the substantial amount from the pay of the petitioners sans legal permissibility. Moreover, particularly when there is no misrepresentation nor there is element fraud played by the petitioners for getting the trained scales of pay.

(III) It appears from the facts of the aforesaid cases that the benefit of the trained scale has been granted to the petitioners more than two decades back and some of the petitioners has retired. In the meantime, the decision rendered

by the Full Bench of this Court in <Atilde;?>Smt. Normi Topno v. The State of Jharkhand & Othes, reported in 2007(4) JLJR 466 subsequently applicable to the case of the petitioner. In the aforesaid decision, it has been held by the Full Bench of this Court that once the monitory benefits is already paid to the employee and there is no allegation of misrepresentation or fraud, the amount cannot be recovered. Similar view has been taken by this Court in case of Amar Nath Singh v. State of Bihar and others, reported in 2004 (2) JCR 342 (Jhr). Recently, The Hon"ble Apex Court reported in (2015) 4 SCC 334 in the case of State of Punjab And Others v. Rafiq Masih (white washer) And Others relying on various judgment including judgment rendered in the case of Chandi Prasad Uniyal And Others v. State of Uttarakhand And Others reported in (2012) 8 SCC 417 has been pleased to hold in paragraph 18 of Rafiq Masih (white washer) case (supra) 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 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 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.

20. In view of the reasons stated in foregoing paragraphs and as cumulative effect of the aforesaid reasons and judicial pronouncement and as a logical sequitur to the aforesaid reasons the impugned orders in respective writ applications are quashed and set aside and resultantly, the writ petition stands allowed.