

**(2019) 02 MAN CK 0008**  
**In the Manipur High Court**  
**Case No : Writ Petition (c) No. 727 Of 2017**

Chanambam Thoiba Singh

APPELLANT

Vs

Bharat Sanchar Nigam Limited And Others

RESPONDENT

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**Date of Decision :** 08-02-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 136, 142  
Central Civil Services (Pension) Rules, 1972 — Rule 71, 72, 73  
Manipur Civil Services (Pension) Rules, 1977 — Rule 70A

**Citation :** (2019) 02 MAN CK 0008

**Hon'ble Judges :** Kh. Nobin Singh, J

**Bench :** Single Bench

**Advocate :** N. Jotendro, S. Samarjeet

**Final Decision :** Allowed

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## Judgement

Kh. Nobin Singh, J

[1] Heard Shri N. Jotendro, learned Senior Advocate appearing for the petitioner and Shri S. Samarjeet, learned CGC appearing for the respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of certiorari or any other appropriate writ to quash and set aside the order dated 11-09-2017 issued by the Account Officer, Office of the Controller of Communication Accounts thereby withholding a sum of Rs. 13,16,633/- (Rupees thirteen lakhs sixty three thousand six hundred and thirty three) only.

[3.1] According to the petitioner, he was initially appointed as the Junior Engineer (Civil) under the Post and Telegraph Sub-Division (Civil), Imphal vide order dated 06-10-1982 issued by the Assistant Director, Telecom (E) General Manager: N.E. Telecom Circle, Shillong and since then, he had been discharging his duties sincerely, diligently and satisfaction to all concerned, without any break, till he attained the age of superannuation.

[3.2] The petitioner was given promotions from time to time and lastly, he was

promoted to the post of Executive SDE (Telecom) vide order dated 26-07-2013 issued by the Chief General Manager, NETF. On attaining the age of superannuation, the petitioner was allowed to retire from service w.e.f. 28-02-2017 vide order dated 28-02-2017 issued by the Deputy General Manager, Task Force, Jorhat. A 'No Due Certificate' was issued in favour of the petitioner vide order dated 01-05-2017 issued by the AGM (Admn. & Plg.), Office of the GMTD, BSNL, Manipur, SSA thereby stating that there was no dues of License fee and other applicable charges upto October, 2017 as per the record available in its office. But while releasing the amount of Rs.18,23,023/- (Rupees eighteen lakhs twenty three thousand and twenty three) only being the payment of his gratuity, the Accounts Officer, Officer of the Controller of Communication Accounts, BSNL, Pan Bazar, Guwahati vide its order dated 11-09-2017 withheld a sum of Rs.13,63,633/- (Rupees thirteen lakhs sixty three thousand six hundred and thirty three) only towards recovery of excess amount paid to the petitioner.

[3.3] Being aggrieved by the deduction of the said amount, the instant writ petition has been filed by the petitioner on the inter-alia grounds that in a similar case, this Court had passed an order dated 18-04-2005 directing that no recovery of excess amount be made. Similarly, a judgment and order dated 06-11-2018 passed in WP(C) No.456 of 2005 was challenged by way of a writ appeal being WA No. 61 of 2009 which was dismissed by the Division Bench on 28-01-2011. The revision of pay was made, from time to time, by the competent authority without any initiation from the side of the petitioner. Unless the amount so received has been managed to withdraw by the petitioner on his initiation, no deduction can be made and the petitioner cannot be made to suffer on account of the error having been committed by the competent authority.

[4] An affidavit-in-opposition on behalf of the respondent Nos. 1 to 4 has been filed wherein it has been stated that the officer was paid excess/ overpaid pay and allowances, the amount of which was assessed and calculated by the Account Officer, being the pension payment authority vide its letter dated 31-08-2017. The amount was noted for deduction from the retirement gratuity payable to the retired official in accordance with the authority issued by the office of the Controller of Communication Accounts, Guwahati as per Rule 71 to 73 of the CCS Pension Rules. Due to wrong fixation of pay from 1998 onwards, over payment made to the officer was calculated to be Rs. 11,81,331/- with last pay drawn being Rs. 51,110/-. That amount was revised to Rs. 13,63,633/- by the office of the Controller of Communication Accounts, Guwahati. Excess payment of public money which is often described as "tax payers money" belongs neither to the officer who has effected overpayment nor that of the recipients. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Therefore, any amount paid / received without any authority of law can always to be recovered barring few exceptions of extreme hardships but not as a matter of right.

[5] During the course of hearing, it has been submitted by Shri N. Jotindro, the learned counsel appearing for the petitioner that the issue involved herein is squarely covered by the judgment and order dated 01-12-2015 passed by this Court in writ petition being WP (C) No. 61, 209 and 325 of 2016. On the other hand, in order to support the case of the respondents, Shri S. Samajeet, the learned counsel appearing for the respondents has relied upon the decisions rendered by the Hon'ble Supreme Court in the case of Central Board of Dawoodi Bohra Community & anr. Vs. State of Maharashtra, (2005) 2 SCC 673; Chandi Prasad Uniyal Vs. State of Uttarkhand & ors., (2012) 8 SCC 417 and State of Punjab Vs. Rafiq Masih, (2015) 4 SCC 334.

[6] On perusal of the judgment and order dated 01-12-2015 passed by this Court in writ petitions being WP (C) Nos. 61, 209 and 325 of 2016, it can be safely said that the contention of the learned counsel appearing for the petitioner has some force and merit for the reason that while disposing of the said writ petitions, this court had already considered the submissions which are similar to that of the submissions being made by the counsel appearing for the respondents. Moreover, this court had considered the principles laid down by the Hon'ble Supreme Court in the said decisions relied upon by the counsel appearing for the respondents. The relevant paras of the judgment and order dated 01-12-2015 read as under:

"6. From the preceding para, it is clear that it is permissible for the State Government to recover excess payment in accordance with law, i.e., Rule 70-A of the Manipur Civil Services (Pension) Rules, 1977, in the present cases, the validity of which had not been challenged by any of the petitioners. Since the petitioners had not preferred a writ appeal against the order dated 29-08-2008 passed by the learned Single Judge in W.P. (C) No. 447 of 2007 nor had they challenged the validity and correctness of Rule 70-A of the Manipur Civil Services (Pension) Rules, 1977, it can be easily inferred that the State Government is competent in law or has the authority to recover the excess payment which had been made erroneously or irregularly in favour of the employees. But the only case of the petitioners, as submitted by Shri M. Hemchandra, Advocate and Shri H.S. Paonam, Senior Advocate appearing for the petitioners, is that since the overpayment has not been made on account of misrepresentation or fraud being committed by them or it cannot be attributed to them, no recovery of excess payment can be made in view of the law laid down by the Hon'ble Supreme Court in the case of Syed Abdul Qadir Vs. State of Bihar (supra). Moreover, the learned counsels appearing for the petitioners have relied upon the decision rendered by the Hon'ble Supreme Court in the case of State of Punjab & ors. Vs. Rafiq Masih (White Washer) & anr., reported in (2015) 4 SCC 334. Shri S. Suresh, learned counsel appearing for the respondent No. 4 submitted that no law had been laid down by the Hon'ble Supreme Court in Syed Abdul Qadir Vs. State of Bihar case (supra) as submitted above and since the relief against the recovery was granted not because of any right in the employees but in equity, exercising discretion to relieve the employees from the hardship that will be

caused if the recovery is ordered, it would not apply to the facts of the present cases. According to him, the law has been laid down in the case of Chandi Prasad Uniyal & ors. Vs. State of Uttarakhand & ors., reported in (2012) 8 SCC 417 as is evident from the decision rendered by the Hon'ble Supreme Court in the case of State of Punjab & ors. Vs. Rafiq Masih (White Washer) & anr., reported in (2014) 8 SCC 883. His submission has been supplemented by Shri S. Rupachandra, ASG by contending that the financial involvement is about 13 crore and in the event of recovery of excess amount being not allowed by this court, the financial burden of the State Government will be enhanced beyond its capacity.

7. The submission of the learned counsel appearing for the respondent No. 4 has some substance to the extent that no law has been laid down in the case of Syed Abdul Qadir Vs. State of Bihar (supra) by the Hon'ble Supreme Court as to the question whether the amount that has been paid in excess in favour of the employee, can be recovered or not. In the said case, the Hon'ble Supreme Court, relying upon the decisions rendered in Shyam Babu Verma Vs. Union of India, reported in (1994) 2 SCC 521 and Sahib Ram Vs. State of Haryana, reported in 1995 Supp (1) SCC 18, granted relief against recovery of excess payment in equity keeping in mind the peculiar facts and circumstances of that case so as to avoid any hardship to the appellants therein and held:

"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 counteraffidavit, 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."

In Chandi Prasad Uniyal case (supra), the Hon'ble Supreme Court considered a specific issue as to whether the appellant therein can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Hon'ble Supreme Court, after taking into consideration its earlier decisions including that of Syed Abdul Qadir Vs. State of Bihar case (supra), came to the conclusion 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 amount so made could be recovered and held:

"14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara case, the excess payment made due to wrong/irregular pay fixation can always be recovered.

16. The appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no

reason to interfere with the judgment of the High Court. However, we order that the excess payment made be recovered from the appellant's salary in twelve equal monthly instalments starting from October 2012."

8. The difference of views expressed by the Hon'ble Supreme Court in *Shyam Babu Verma Vs. Union of India* and *Sahib Ram Vs. State of Haryana* cases (supra) on the one hand and in *Chandi Prasad Uniyal* case (supra) on the other hand was referred to a bench of three Judges in the case of *State of Punjab & ors. Vs. Rafiq Masih & ors.* (supra) and *Rakesh Kumar Vs. State of Haryana & ors.*, reported in (2014) 8 SCC 892 for adjudication thereon and in the case of *State of Punjab & ors. Vs. Rafiq Mashi & ors.* (supra), the Hon'ble Supreme Court has admittedly observed about the law having been laid down in *Chandi Prasad Uniyal* case. However, the Hon'ble Supreme Court, while noticing that in the decisions of *Shyam Babu Verma Vs. Union of India* and *Sahib Ram Vs. State of Haryana* cases (supra), directions were issued in exercise of powers under Article 142 of the Constitution and in *Chandi Prasad Uniyal* case (supra), the Hon'ble Supreme Court, laying down the law, had dismissed the petition under Article 136 of the Constitution and after examining the powers of the Supreme Court under Article 136 and 142 of the Constitution of India, was of the opinion that the decisions based on different scales of Article 136 and 142 of the Constitution of India could be not best weighed on the same grounds of reasoning and that there was no conflict in the views expressed in the first two judgments and the later judgments and without answering the reference, the matters were sent back to the Division Bench for appropriate disposal.

9. All those matters which were sent back to the Division Bench for disposal as aforesaid, came to be decided by the Hon'ble Supreme Court in the case of *State of Punjab & ors. Vs. Rafiq Masih (White Washer) & ors.*, reported in (2015) 4 SCC 334 after considering the issue whether all the private respondents, against whom an order of recovery (of excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. In order to lay down the parameters of fact situations, the Hon'ble Supreme Court examined a large number of judgments rendered earlier by it and after having examined them, the Hon'ble Supreme Court was of the view that the benefits against recovery could not extend to an employee merely because he was not an accessory to the mistake committed by the employer or merely because the employee did not furnish any factually incorrect information on the basis whereof the employer committed the mistake of paying excess amount or merely because the excessive payment was made to the employee in the absence of any fraud or misrepresentation at the behest of the employee. The Hon'ble Supreme Court further held that the orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with in cases where such recovery would result in a hardship of a nature which would far outweigh the equitable balance of the employer's right to recover and in other words, interference would be called for, only in such cases where it would be iniquitous to recover the payment made. After having examined the

factual situations in respect of Syed Abdul Qadir Vs. State of Bihar, Shyam Babu Verma Vs. Union of India, Sahib Ram Vs. State of Haryana cases (supra) and B.J. Akkara Vs. Government of India case in the light of what had been held as shown above, the Hon'ble Supreme Court was of the opinion that such recovery of excess payment would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution. However, the Hon'ble Supreme Court was conscious of the fact that it would not be possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments had mistakenly been made by the employer, in excess of their entitlement and based on the decisions referred to above, the Hon'ble Supreme Court summarised few situations into four categories wherein recoveries by the employers would be impermissible in law.

10. From the perusal of the various decisions of the Hon'ble Supreme Court as stated above, it is seen that any amount paid to or received by an employee without the authority of law, can always be recovered from him except in cases of extreme hardships where it would be iniquitous and arbitrary when the recovery is sought to be made by the employer. Now, the question that arise for consideration is as to whether the present cases would fall within the four categories as summarised by the Hon'ble Supreme Court in the case of State of Punjab & ors. Vs. Rafiq Masih (White Washer) & ors., reported in (2015) 4 SCC 334. In the present cases, it is not in dispute that the petitioners who were working as Head Pandits/ Head Masters of LP/JB Schools at the relevant time, had retired long back and therefore, this court is of the view that the petitioner's cases would definitely fall under the category (ii), of the said fact situations, which has been summarised based on the case of Syed Abdul Qadir case (supra), in respect of which the Hon'ble Supreme Court has now observed that it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation. In other words, the issue involved herein is covered by the said recent decision of the Apex Court. The contention of Shri S. Rupachandra, ASG cannot be countenanced for the reason that the financial problem cannot be a ground to deny fundamental rights under Article 14 of the Constitution of India. The period for which the recovery of excess amount sought to be made appears to be from April, 2005 to December, 2006. However, in the order dated 03-03-2009 passed by the Hon'ble Gauhati High Court, Imphal Bench in W.A. No. 5 of 2009, the period for payment of arrear pension is shown to be from April, 2005 to January, 2006 whereas the learned Single Judge in its order dated 09-05-2012 passed in W.P. (C) No. 646 of 2011 has recorded the period commencing from January, 2005 to December, 2006. Therefore, it is not clear to this court as to what is the exact period for which the arrear pension/family pension is claimed to be released by the State Government. But this court may not go into that controversy in view of the fact that in the impugned Government orders dated 28-11-2014, it is specifically ordered that the Accountant General,

Manipur shall issue revised pension pay order on the basis of the substantive pay to the petitioners with effect from April, 2005 to December, 2006.

It is submitted by Shri K. Jagat, learned Government Advocate that a writ Appeal being Misc. Case (W.A) No. 143 of 2009 preferred against the order dated 26-10-2009 passed by the learned Single Judge in W.P. (C) No. 954 of 2006, is pending for adjudication by this court. However, in view of the law having been settled by the Hon'ble Supreme Court in State of Punjab & ors. Vs. Rafiq Masih (White Washer) & ors., reported in (2015) 4 SCC 334, the issues involved herein can be decided and there is no need for this court to await the outcome of the said writ appeal pending for more than five years."

[7] The principle laid down by the Hon'ble Supreme Court in Chandi Prasad Uniyal case as regards the recovery of excess amount paid to the employee, is 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 amount so made could be recovered but while reiterating the said law, the Hon'ble Supreme Court in State of Punjab Vs Rafiq Masih case (supra) has carved certain exceptions wherein the law as laid down in Chandi Prasad Uniyal case will have no application. It may be noted that the respondents in their affidavit have admitted such exceptions being carved by the Hon'ble Supreme Court. In the present case, admittedly the petitioner had retired from service w.e.f. 28-02-2017 vide order dated 28-02-2017 issued by the Deputy General Manager, Task Force, Jorhat and 'No Due Certificate' was issued in favour of the petitioner vide order dated 01-05-2017 issued by the AGM (Admn. & Plg.), Office of the GMTD, BSNL, Manipur, SSA thereby stating that there was no dues of License fee and other applicable charges upto October, 2017 as per the record available in its office. But while releasing the amount of Rs.18,23,023/- (Rupees eighteen lakhs twenty three thousand and twenty three) only being the payment of his gratuity, the Account Officer, Office of the Controller of Communication Accounts, BSNL, Pan Bazar, Guwahati vide its order dated 11-09-2017 withheld a sum of Rs.13,63,633/- (Rupees thirteen lakhs sixty three thousand six hundred and thirty three) only towards recovery of excess amount paid to the petitioner. The facts of the present case are almost identical to that of the said cases, in the sense that in the manner as had been done in the said cases, the excess amount was sought to be recovered in the present case only after the petitioner had retired from service. Therefore, in view of the law laid down by the Hon'ble Supreme Court in State of Punjab Vs. Rafiq Masih and in particular, the exceptions being carved out therein which would cover the issue involved herein, the impugned order is bad in law and is liable to be quashed and set aside.

[8] In view of the above and for the reasons stated hereinabove, the instant writ petition is allowed and consequently, the impugned order dated 11-09-2017 issued by the Account Officer, Office of the Controller of Communication Accounts, BSNL, Pan Bazar, Guwahati is quashed and set aside with no order as

to costs.