
(2010) 09 GAU CK 0060

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 55 (K) of 2009

Nagaland Pwd Field Workers Association

APPELLANT

Vs

State of Nagaland & Ors.

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Citation : (2010) 5 GLT 506

Hon'ble Judges : C.R.Sarma, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioner: Mr.C.T.Jamir, Mr.Wati Jamir.Mr.N.Lkr, Mr.Wati Walling, Mr.Akum Jamir & Mr.Imkong Jamir, Advocates appeared Respondents: Ms.Y.Longkumer, Addl.G.A.& Mr.T.B.Jamir, Advocates appearing for Parties

Judgement

C.R. Sarma, J.—Heard Mr. C.T. Jamir, learned counsel appearing for the petitioner. Also heard Ms. Y. Longkumer, learned Addl. Govt. Advocate appearing for the Staterespondents and Mr. T. B. Jamir, learned CGC, appearing for the respondent No. 7.

2. The factual matrix, leading to the filing of this writ petition, may, in brief, be stated as follows:

The petitioner is a registered Association of Field Workers under the Public Works Department, consisting of GradeIII and GradeIV employees. The members of the petitionerorganisation, are aggrieved by the order, issued by the Government, directing refixation of their pay and recovery of excess amount, already paid to them as salary. The members of the petitionerorganisation (hereinafter called "the petitioners"), having working as work charged employees till their regularization w.e.f. 01.06.1998. The Nagaland Services (Revision of Pay) Rules, 1999 (hereinafter called "ROF Rules, 1999), came into effect from 01.06.1998. As per Rule 2(b)(1) of the ROP Rules. 1999, issued vide Notification, dated 8th October, 1999, it was made clear that the benefit extended by the said ROP Rules, 1999, shall not apply to all categories of workcharge employees, persons

paid out of contingencies, persons employed on contract, except where the contract provides otherwise, persons reemployed in Govt. service after retirement and any other cases or category of persons whom the Governor may, by order, specifically exclude from the operation of all or any of the provisions contained in these rules. However, no such restriction was imposed by the earlier Rules relating to pay revision i.e. the Nagaland Services Rules (Revision of Pay) Rules, 1993, issued vide Notification, dated 25th November, 1993.

3. In view of the above, as the services of the petitioners were not regularized prior to 01.06.1998/2003, pursuant to the restriction imposed by ROP Rules, 1999 aforesaid, the petitioners were not entitled to get pay under the ROP Rules, 1999. In view of Rule 2(b)(1) of the ROP Rules, 1999, as the workcharged staff, whose services were regularized on or after 01.06.1998, were placed in a disadvantage position, causing loss in respect of their emoluments compared to the prerevised emoluments, the Government vide Office Memorandum, dated 19.05.2003, issued by the Commissioner, Finance Department, allowed the workcharged employees, whose services were regularized on or after 01.06.1998, to retain the prerevised pay scale at their option. It is worthy to mention here that despite the restriction aforesaid, the pay and allowances of the work charged employees i.e. the petitioners were fixed under the ROP Rules, 1999 and accordingly pay was given to them. After issuance of the said Notification, apprehending recovery of excess payment, due to wrong fixation of pay scale, some the members of the petitioner's Association, filed writ petition being W. P. (C) No. 258(K) of 2007, seeking a direction to the Government, not to make any recovery/deduction in respect of the pensionary benefits or from any accounts of the employees. In the said writ petition, the learned Addl. Govt. Advocate, submitted that no impugned order was issued by the Government, directing recovery of any excess amount for any period and that in absence of any such order/notification, the petitioners, in the said writ petition, were not entitled to claim any relief. In view of the submission, this Court, vide judgment and order, dated 20.10.2008, dismissed the writ petition with the following observations:

"However, since no impugned orders have been passed by the State Government nor the same has been challenged by the petitioners, in my considered opinion, this writ petition is premature, and therefore, under the facts and circumstances stated above, this writ petition stands rejected."

4. After dismissal of the aforesaid writ petition, the Principal Secretary & Finance Commissioner, Govt. of Nagaland, by his letter, dated 20th November, 2008, referring to the Office Memorandum, dated 19.05.2003 aforesaid and the judgment and order, dated 20.10.2008, passed by this Court in W. P. (C) No. 258(K) of 2007, asked the Chief Engineer, PWD (R & B)/ Housing/Mechanical, Nagaland, Kohima, to take steps for recovery of excess payment made due to wrong fixation, if any, in suitable monthly installments from future salaries in case of serving employees and from the pensionary benefits, in case of those,

who have already retired. In the said letter, it was also made clear that the refixation of pay may be done after taking into consideration the option given by such employees in response to the Office Memorandum, dated 19.05.2003 aforesaid.

5. After issuance of the said letter, dated 20.11.2008, the petitioners submitted representation to the Principal Secretary & Finance Commissioner, Nagaland, Kohima, requesting him not to make any recovery with regard to excess payment, if any. In response to the said representation, the Joint Secretary & Finance Commissioner, Nagaland, informed that there was no merit, in the representation, for revoking or modifying the Government communication, dated 20.11.2008 aforesaid.

6. According to the petitioners, no opportunity was given to the employees for giving option in respect of the pay scale and that the order regarding refixation of pay was not lawful inasmuch as there was no laches or fault or negligence or misrepresentation on their part with regard to the fixation of pay and excess payment, if any. It is further contended by the petitioners, that, as per Office Memorandum, dated 22.01.2001, preparation and checking of "Initial Pay Statements" (for short "IPS"), under the ROP Rules, 1999, was the responsibility of the authorized checking officers and that no fault could be found with the petitioners for such wrong fixation of pay scale, by the authority concerned. It is also stated that the petitioners, being GradeIII and GradeIV employees, belonged to the lower category of service and that most of them were semiliterate and illiterate, for which they cannot be penalized, at the verge of their retirement, by resorting to recovery of pay and allowance, already paid to them, for no fault on their part, that too, after such long delay of 7 to 12 years. It is further contended that, without giving any opportunity to the petitioners to exercise their option to retain the prerevised pay scale, refixation of their pay, vide Office Order, dated 8th January, 2009, was unlawful and arbitrary. The petitioners' further contention is that, though there are three establishments under the PWD, no refixation has been done in respect of the other establishments, namely, Road & Bridges (R & B) and Housing and that the employees belonging to the said two Departments have been allowed to enjoy the initial pay scale, which was fixed at the time of their regularization and that refixation with retrospective effect in respect of the petitioners i.e. the employees belonging to the PWD (Mechanical) has been arbitrary and discriminatory.

In view of the above, the petitioners have prayed for quashing and setting aside the impugned orders dated 20th November, 2008, 8th January, 2009 and 23rd February, 2009, by which refixation of pay and recovery of excess payment were ordered.

7. The respondent Nos. 1 and 2, contested the petitioners' claim by filing affidavits in opposition. Denying the allegations made by the petitioners, the contesting respondents, in their affidavits in opposition, stated that, as the benefit, given by the ROP Rules, 1999, was not applicable to the workcharged employees,

considering the loss of emoluments in respect of such employees, the State Government issued a Memorandum, dated 19.05.2003, allowing such employees to retain the prerevised pay scale at their option. Denying the allegation that no opportunity was given to the petitioners to exercise their option, the contesting respondents, stated that, by the Office Memorandum, dated 19.05.2003 aforesaid, opportunity was given to all the employees to exercise option to retain the prerevised pay scale and that the said offer was still valid. Denying the allegation of discrepancy, the respondent Nos. 1 and 2, in their affidavitinopposition, stated that the Office of the Accountant General returned the pension papers of some of the employees, on the ground of wrong fixation of pay, and that the Department concerned would rectify the defects, if necessary, by obtaining option from the incumbents concerned as per the Office Memorandum, dated 19.05.2003 and resubmit the same to the Accountant General for further action. While admitting that it was the duty of the officials of the concerned Department to fix the pay etc., the contesting respondents, stated that the employees concerned was also responsible to satisfy himself that he was being paid as per his entitlement under the Rules. It is also contended that, as the fixation of pay and the payment thereof was done in complete disregard and violation of the ROP Rules, 1999 and the Government Orders, the workcharged employees, whose services were regularized, are liable to refund the excess payment made to them.

8. The respondent Nos. 3,4,5 and 6 also reiterating the stand taken by the respondent Nos. 1 and 2, stated that in view of the Office Memorandum, dated 19.05.2003 aforesaid, the employees could exercise their option for retaining the prerevised pay scale and in view of the stay order, granted by the Court in respect of the Finance Department's letter, dated 20.11.2008 aforesaid, no steps could be taken for recovery in respect of the employees of other establishments i.e. the establishments of Road and Bridges and Housing wings of the PWD, and as such no discrimination was committed in respect of the petitioners.

9. The respondent No. 7 i.e. the Accountant General, Nagaland, Kohima, by filing affidavitinopposition, submitted that the Accountant General acted as per orders issued by the Govt. of Nagaland, Finance Department's letter, dated 20.11.2008, and that the impugned Notifications/Orders were not issued by the Office of the Accountant General, hi view of the above, the respondent No. 7, prayed for deleting its name from the instant writ petition.

10. Mr. C. T. Jamir, learned counsel. appearing on behalf of the petitionerAssociation, has submitted that, the respondentauthority, wrongly fixed the pay of the petitioners under the ROP Rules, 1999 and did not take any steps to rectify such mistake immediately thereafter and thus allowed the petitioners, who were lowly paid employees, to get their salary under the ROP Rules, 1999, for the last 7 to 12 years. Mr. Jamir, strenuously argued that the petitioners, being GradeIII and GradeIV employees, belonged to the lower Grade of service and that most of them being semiliterate and illiterate persons, had no role in

fixation of their pay scale under the ROP Rules, 1999. Therefore, the learned counsel, has submitted that, as there was no misrepresentation or fraud on the part of the petitioners, the excess amount paid to the petitioners, as their pay and allowances, by the respondent authority, due to wrong fixation of pay, can't be recovered at this belated stage. It is also contended that the recovery of the said amount either by monthly installments, in respect of inservice employees or from the pensionary benefits, in respect of the retired employees, will cause much hardship and inconvenience to the employees concerned as well as their dependant family members at this late stage of service. In support of his contention, the learned counsel, has relied on the decisions held in the following cases:

- (1) Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors.: (2009) 3 SCC 475;
- (2) Registrar, Cooperative Societies, Haryana & Ors. Vs. Israil Khan & Ors.: (2010) 1 SCC 440;
- (3) Jyotsna Rani Das Vs. State of Tripura & Ors.: (2009) 2 GLT 513;
- (4) Paras Nath Singh Vs. State of Bihar & Ors.: (2009) 6 SCC 314.

11. Refuting the said argument, advanced by the learned counsel, appearing on behalf of the petitioners, Ms. Y. Longkumer, learned Addl. Govt. Advocate, has submitted that, as the petitioners were not entitled to get the benefit of pay revision under the ROP Rules, 1999, the Government, considering the interest of the petitioners and to avoid loss, that may be caused to the petitioners, allowed them to retain the prerevised pay scale by exercising option. The learned Addl. Govt. Advocate, has further submitted that, as the excess amount was paid to the petitioners due to wrong fixation of the pay by some of the officials of the Department concerned and in view of the fact that fixation of pay and allowance, under the ROP Rules, 1999, was contrary to the provisions laid down by the said ROP, the initiation of the process, to recover the excess amount paid to the employees due to such wrong fixation, does not amount to violation of any established principle of law. On behalf of the respondents, it is further submitted, by the learned Addl. Govt. Advocate, that, till date, the Government has not recovered any amount from the petitioners and that the operation of the impugned letter, dated 20.11.2008, will come into effect only after refixation of the pay. It is also mentioned that the parties may now exercise option to retain the prerevised scale.

12. Having heard the learned counsel for both the parties and considering the materials on record, I find that the short question involved in this writ petition is, whether the excess amount paid to the petitioners as pay for the period prior to 1998/2003 due to wrong fixation of the petitioners' pay and allowance, in violation of the terms and conditions of the ROP Rules, 1999, can be recovered now.

13. There is no dispute that the petitioners were initially appointed as

workcharged employees and they were regularized during the period w.e.f.01.06.1998 to 19.05.2003. As per the earlier Revision of Pay i.e. the ROP Rules, 1993, they got the benefit of pay fixation, despite being engaged as workcharged employees. But, by Rule 2(b)(i) of the ROP Rules, 1999, which came into effect from 01.06.1998, the benefit of the said pay revision has not been extended to all categories of workcharged employees i.e. the petitioners.

14. Vide Clauses (iii) and (iv) of Office Memorandum, dated 22.01.2001, issued by the Principal Secretary & Finance Commissioner, Govt. of Nagaland, regarding preparation and checking of IPS under the ROP Rules, 1999, it was made clear that the authorized Checking Officers were required to carry out the verification of the IPS personally and that they would be personally and solely responsible for the correctness of the IPSs, checked by them. Therefore, by the said Office Memorandum, the responsibility of pay fixation, under the ROP Rules, 1999, was given to the officers of the Department concerned. No responsibility was given to the employees concerned in this regard. Therefore, there is no difficulty in understanding that the fixation of pay, which was, in contrary to the provisions, prescribed by the ROP Rules, 1999, was done by the authorized officials of the Government and the petitioners had no role in such fixation. The option to retain the earlier pay scale was offered by the Office Memorandum, dated 19.05.2003, i.e. much after the coming into effect of the ROP Rules, 1999. Fact remains that the services of the members of the petitioner Association were regularised during the period w.e.f. 01.06.1998 to 19.05.2003.

15. In order to appreciate the rival submissions, made by both the parties regarding recovery of the excess amount paid as pay and allowances, it would be appropriate to understand the law laid down by the Supreme Court and our High Court in various cases.

16. In the case of Syed Abdul Qadir (*supra*), the Supreme Court observed as follows:

"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 Vs. State of Haryana: 1995 Supp. (1) SCC 18, Shyam Babu Verma Vs. Union of India: (1994) 2 SCC 521, Union of India Vs. M. Bhaskar: (1996) 4 SCC 416, V. Gangaram Vs. Director: (1997) 6 SCC 139, Col. B. J. Akkara (Retd. Officer Vs. Govt. of India: (2006) 11 SCC 709. Purshottam Lal Das Vs. State of Bihar: (2006) 11 SCC 492, Punjab National Bank Vs. Manjeet Singh: (2006) 8 SCC 647, Bihar SEB Vs. Bijay Bhadur: (2000) 10 SCC 99.

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." The Supreme Court, while allowing the appeal in part, directed not to recover the amount that has been paid in excess to the teachers. The Supreme Court further directed that the amount that has been already recovered from the teachers be refunded. The directions were made applicable to all the teachers irrespective of the fact whether they moved the Supreme Court or not.

17. In the above referred case, it was observed by the Supreme Court that the appellants had played no misrepresentation and fraud in the fixation their pay by the officials of the Bihar Government and that the appellants had no knowledge that they were paid more than what they were entitled. In the present case before this Court, also the fixation was wrongly done by the officials concerned of the Government of Nagaland. There is nothing on record to show that the petitioners, who were GradeIII & GradeIV employees, had knowledge that they were paid more than what they were entitled and also that they were required to repay some of the amount drawn by them. Therefore, the principle of law laid down by the Supreme Court in the above cited case is applicable to the case in hand.

18. In the case of Registrar, Cooperative Societies, Haryana (supra), the Supreme Court observed as follows:

"7. There is no "principle" that any excess payment to employees should not be recovered back by the employer. This Court, in certain cases has merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/allowances from employees on the ground of hardship, where the following

conditions were fulfilled:

"(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/allowances or on the basis of a particular interpretation of rule/ order, which is subsequently found to be erroneous."

"8. In Col. B. J. Akkara (Retd.) Vs. Govt. of India: (2006) 11 SCC 709 this Court explained the reason for extending such concession thus: (SCC pp. 72829, para 28)

"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." (emphasis supplied)

"9. What is important is, recovery of excess payments from employees is refused only where the excess payment is made by the employer by applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, Courts will not use their discretion to deny the right to recover the excess payment."

19. In the case of Paras Nath Singh (supra), the appellant (since retired), was appointed in the post of Orderly in the Department of Planning and Development in the State of Bihar. On 29.08.1972, he was promoted to the post of Machine Boy and, thereafter, he was made Routine Clerk, on 13.06.1974, and allowed to function as such in the said post. On 15.04.1995, he was given provisional first timebound promotion w.e.f. 13.06.1984. Subsequently, his timebound promotion was cancelled after 10 years and recovery was ordered. The writ petition filed by the appellant was dismissed by the High Court. On appeal, the Supreme Court, while allowing the appeal, observed as follows:

"4. Having heard the learned counsel for the parties and considering the fact that the State authorities had allowed the appellant to work for about 10 years and

paid the salary at the enhanced rate, in which the appellant had no role to pay except that he had given an undertaking to the authorities that in the event his first timebound promotion was cancelled, in that case, he would be bound to refund the same."

"5. Having considered the fact that the appellant was only a Class IV employee in the State of Bihar and almost an illiterate persona and did not know the implications of giving such undertaking and in the absence of any fraud and misrepresentation attributed to the appellant and the amount being not so excessive, in particular Rs. 1,01,529.50, out of which certain amount has already been recovered from the salary of the appellant by the State authorities, we are of the view that a lenient view should be taken and the amount already paid by the State authorities to the appellant shall not be recovered. However, whatever amount that has already been recovered, shall not be paid back to the appellant."

20. In the case of Jyotsna Rani Das (*supra*), this Court, discussing a catena of decisions, rendered by the Supreme Court, directed the respondents not to recover the alleged excess amount already drawn by the petitioner. In deciding the said case, a learned Single Judge of this Court, referred to the following observations made by the Supreme Court, in the case of Shyam Babu Verma & Ors. Vs. Union of India & Ors., reported in (1994) 2 SCC 521:

"..... It shall not be just and proper to recover any excess amount which has already been paid to the employee for no fault of theirs. Para 11 of Shyam Babu Verma & Ors. Vs. Union of India & Ors. (*supra*) reads as follows:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330480/ in terms of the recommendations of the Third Pay Commission w.e.f. January 1,1993 and only after the period of 10 years, they became entitled to the pay scale of Rs.330560/ since 1973 due to no fault of theirs and that scale is being reduced in the years 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 respondent, the petitioners being in no way responsible for the same." The learned Single Judge also referred the following observations made by a Division Bench of this Court in the case of All Monipur Degraded Teachers Association Vs. State of Manipur & Ors., reported in 2005 (2) GLT32:

"It is settled law that higher pay scale given erroneously to the incumbents without any default of theirs shall not be recovered. The interest of justice demands that where service of an employee has been utilized by the State in particular post after upgradation, he shall upon degradation from the said post, be entitled to get the salary and allowances of that higher post for the period during which he was holding the same."

21. The ratio laid down by the Supreme Court in the above referred cases is that, in view of the principles of equity and good conscience, the excess amount paid

to an employee, in the absence of any misrepresentation or fraud on the part of such employee, can't be recovered, if such payment was made by the employer due to application of wrong principle for calculating the pay and allowances or on the basis of a particular interpretation of law/order, which is subsequently found to be erroneous. That apart, while resorting to the recovery of excess payment, the hardship and inconvenience, caused to the employee concerned is also required to be considered.

22. As discussed above, there is nothing on record to show that the present petitioners had misrepresented or played any fraud or any role in the fixation of their pay, by the authority concerned. In the impugned letter, dated 20.11.2008, it was stated by the Principal Secretary & Finance Commissioner, Govt. of Nagaland, that recovery of excess payment was necessary due to wrong fixation. In the letter, dated 23.02.2009, issued by the Joint Secretary to the Govt. of Nagaland, it was also mentioned that there was wrong fixation of pay. The respondent Nos. 1 and 2, at para 8 of their affidavit in opposition, admitted that the Checking Officers were responsible for wrong fixation of initial pay of the petitioners. In view of the above, there is no dispute that higher pay scale i.e. the pay scale prescribed by the ROP Rules, 1999, was given to the petitioners due to wrong fixation by the officers of the Department concerned. Therefore, it is quite clear that the pay and allowances of the petitioners were fixed by applying wrong principle i.e. the provision provided by the ROP Rules, 1999, despite there being ban in respect of the petitioners and they were allowed to enjoy such pay benefit for a long period for no fault on their part.

23. There can be no doubt that, the petitioners, who belong to the lower category of service, have spent, whatever emoluments they had received, towards upliftment of their family, genuinely believing that they were entitled to the said amount. Therefore, considering the delay as well as the status of the petitioners, any action as contemplated by the impugned orders, dated 20.11.2008, 08.01.2009 and 23.02.2009, for recovery of the excess amount, if any, at this stage would certainly cause undue hardship and inconvenience to them.

24. Ms. Y. Longkumer, the learned Addl. Govt. Advocate, submitted that, in order to give relief to the petitioners, the Government offered option to retain the earlier pay scale and that pay fixation would be done on the basis of such option, if exercised by the employees concerned. It is further submitted that after such fixation, if it is found that excess payment was made, due to wrong fixation, then steps could be initiated for recovery of excess payment and in the event of less payment, arrears could be paid, if found due and admissible.

25. In view of the above submission, as the petitioners have been given an opportunity to exercise option to retain the earlier pay scale, I am of the considered opinion that the petitioners may exercise such option, even now. Therefore, fixation of pay, after exercise of such option, will clear as to whether excess amount or less amount was paid to the petitioners and the fixation will

also facilitate to ascertain who were paid in excess and who were paid less. If less amount was paid to anybody, certainly, in view of the impugned letter, dated 20.11.2008, he/she would be entitled to get arrear. But, if excess amount has already been paid due to wrong fixation of pay and allowance, that too without any fault on the part of the petitioners, in view of the above discussed principles of law, laid down by the Supreme Court, no recovery, causing hardship and inconvenience to the petitioners, is permissible at this belated stage.

26. Considering the entire aspect of the matter, it is directed that the State Government shall allow the petitioners to exercise their option and pay the arrear amount, if found due, after fixation of pay etc. However, in view of the above discussion, no action shall be taken to recover the excess amount, already paid to the petitioners, either from their monthly salary or retirement benefit. The petitioners shall submit their options within 6 (six) weeks from this date and the respondent authority shall complete the entire exercise at the earliest.

27. With the above directions, this writ petition is allowed to the extent as indicated above.