
(2011) 04 MAD CK 0497
In the Madras High Court
Case No : Writ Petition No. 17197 of 2002

S. Subramanian

APPELLANT

Vs

Life Insurance Corporation of India

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Constitution of India, 1950 — Article 141, 226

Citation : (2011) 04 MAD CK 0497

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : N.G.R. Prasad for Row and Reddy, for the Appellant; S. Silambanan, Associates for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The Petitioner herein was appointed as an Assistant by the Respondents on 29.01.1990 by way of re-employment. Prior to the appointment the Petitioner was working in the Indian Air Force for a period of 15 years. He joined in the Indian Air Force as an Airman on 28.01.1970 and got discharged on 31.01.1985 as a Sergeant. After his discharge, he joined the Office of the Respondents on 29.01.1990.

2. The Petitioner's basic pay was fixed at Rs. 1450/- with effect from 30.04.1990 and he was also paid the arrears thereon. Even before the appointment of the Petitioner, instructions have been issued by the Central Office of the Respondents by way of a Circular dated 02.06.1989 relating to re-employment ex-servicemen. As per the said instruction, the benefits of pay fixation under Paragraphs 3.7 and 3.8 were given only to those ex-servicemen who were already employed prior to 01.01.1988 and not to those appointed after 01.01.1988. This was done considering the fact that the ex-servicemen who have been employed after 01.01.1988 have been allowed to retain their pension from the defence services. The pay which they are getting from the Respondents on the basis of the formula fixed under paragraph 3.1 is in addition to the pension which they are getting.

This benefit however was apparently not available to the ex-servicemen re-employed prior to 01.01.1988.

3. The instruction dated 02.06.1989 issued by the Respondents was the subject matter of a challenge before the Honourable High Court of Kerala. The Honourable High Court was pleased to dismiss the Writ Petition filed by the ex-servicemen who have been re-employed after 01.01.1988 in the year 1992. The Honourable Apex Court in O.K. Udayasankaran and Others Vs. Union of India and Others, was pleased to dismiss the Civil Appeal as well as the Writ Petition filed by the Ex-servicemen Life Insurance Corporation Employees Association upholding the instructions dated 02.06.1989. In so far as the recovery of the excess amount paid, the direction of the High Court was confirmed by the Honourable Apex Court.

4. The Petitioner continued to receive the pension as payable to those ex-servicemen appointed prior to 01.01.1988, by oversight and mistake on the part of the Respondents. By the order dated 30.04.2001, the Senior Divisional Manager of the Respondents informed the Petitioner that by oversight and inadvertence the basic pay of the Petitioner has been wrongly fixed at Rs. 1450/- with effect from 30.04.1990 and therefore, it will be fixed at Rs. 1000/- with effect from 30.04.1990. Accordingly, the Petitioner was informed that his basic pay will be Rs. 6545/- as on 30.04.2001. It was further intimated to the Petitioner that the nature of recovery on excess payment will be intimated in due course. The Petitioner gave a representation requesting the Respondents not to re-fix the pay scale. However, the same was rejected by the proceedings dated 12.01.2002. Challenging the instruction issued by the first Respondent by way of Circular dated 02.06.1989 and the consequential orders of the second Respondent dated 30.04.2001 and 25.04.2002 by which the third Respondent informed the Petitioner that his pay will be reduced from the month of April 2002, the present Writ Petition has been filed.

Submissions of the Petitioner:

5. Shri.N.G.R. Prasad, learned senior Counsel appearing for the Petitioner submitted that the Petitioner has since retired. Therefore, there shall not be any recovery of the amount paid to him. The Respondents being the erstwhile employers will have to adopt fairness in recovering the amount. The payment has been made due to the mistake committed by the Respondents. There is no misrepresentation or fraud on the part of the Petitioner. Courts have to use there discretion when a recovery has been sought for from an employee considering the hardship. Inasmuch as the pay fixation having been done by the Respondents themselves and the inadvertence was made at their end, for the said mistake the Petitioner cannot be penalised. Therefore, considering the length of time and the fact that the Petitioner has retired in the year 2010, this Court has to exercise the judicial discretion by directing the Respondents not to recover the amount payable by the Petitioner. The judgment of the Honourable Apex Court cannot be a binding precedent, since the legal question regarding a

recovery to be made has not been put into issue in the said pronouncement. Therefore, inasmuch as the said issue having not decided, it is well open to the Honourable Apex Court to mould the relief in favour of the Petitioner. In support of the said contentions, the learned senior Counsel has made reliance upon the following judgments:

Shyam Babu Verma and Others Vs. Union of India (UOI) and Others,

Sahib Ram Vs. State of Haryana and Others,

O.K. Udayasankaran and Others Vs. Union of India and Others,

Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another,

State of Bihar and Others Vs. Pandey Jagdishwar Prasad,

Syed Abdul Qadir and Others Vs. State of Bihar and Others,

Bhakra Beas Management Board Vs. Krishan Kumar Vij and Another,

Union of India (UOI) and Others Vs. R. Vasudeva Murthy and Others,

Submissions of the Respondents:

6. Per contra, Shri.S. Silambanan, learned senior Counsel appearing for the Respondents submitted that the issue involved in the Writ Petition is no longer res integra. The judgment of the Division Bench of the Kerala High Court rendered in the year 1992 has been approved by the Honourable Apex Court in the year 1996. Merely because the Petitioner has approached this Court and obtained interim orders against the recovery, no equity can be extended to him. When the law is settled there is no question of extending the equity in favour of the parties. Inasmuch as the Writ Petition itself is devoid of facts as the issue is concluded by the judgment of the Honourable Apex Court, the relief sought for cannot be granted. The fact that the Petitioner has retired in the year 2010 cannot be a ground to hold that there shall be no recovery as it has been made uniformly through out the country against the identically placed employees. The Honourable Apex Court in O.K. Udayasankaran and Others Vs. Union of India and Others, , after taking note of the difficulties directed the Respondents to recover the amount in instalments. It is pertinent to note that the Petitioner has already been receiving the pension as an ex-servicemen and therefore, he is enjoying the double benefits which was not available to others identically placed. Therefore, the learned senior Counsel submitted that the Writ Petition will have to be dismissed.

Binding Nature of a judgment:

7. It is trite law that a judgment cannot be read as a statute. A decision would be a binding one, only when it is decided on a conscious consideration of the issue involved. A mere observation or an incidental remark cannot be termed as a binding precedent. There has to an issue raised and decided by the Court on the

earlier occasion.

8. LORD DENNING while dealing with the law of precedent has observed as follows:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

9. The Honourable Apex Court in COMMISSIONER OF CENTRAL EXCISE, BANGALORE v. SRIKUMAR AGENCIES AND ORS. ((2009) 1 SCC 469) has held as follows:

4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

10. Applying the said ratio laid down by the Honourable Apex Court to the present case on hand, this Court finds that the facts involved in the judgment rendered by the Honourable Apex Court in O.K. Udayasankaran and Others Vs. Union of India and Others, are different than the one on hand. The discussions made above would clearly demonstrate the negligence, mistake and inadvertence on the part of the Respondents. In the said judgment referred supra, the Honourable Apex Court was dealing with the recovery to be made in pursuant to the order impugned. It was primarily concerned with the payment of excess amount payable by the ex-servicemen in view of the interim orders obtained. Further, the question of the legality of a recovery of an amount paid to an employee not due to the misrepresentation or fraud on his part was never an issue before this Court. Moreover, the facts involved in the present case would show that it involves an action taken after the judgment of the Honourable Apex Court. Therefore, this Court is of the considered view that the judgment rendered by this Court would not be a bar for deciding the issue of recovery of the excess amount paid to the Petitioner.

Whether the Respondents can recover the arrears till the passing of the order impugned dated 25.04.2002:

11. The facts narrated above show no doubt in the mind of this Court that the

legal issue raised in the Writ Petition, challenging the Circular dated 02.06.1989 has already attained finality. It is trite law that under Article 141 of the Constitution of India, a judgment rendered by the Honourable Apex Court is binding on the High Courts. Therefore, when the very same Circular has already been upheld by the Honourable Apex Court then the very basis of the Writ Petition itself falls to the ground.

12. The only remaining question to be decided in the Writ Petition is the recovery sought to be made. Now in the present case on hand, we are concerned with two categories of recovery; one recovery is as per the orders impugned and the other is after passing the said orders as a consequence on the interim orders granted by this Court.

13. In so far as the recovery is sought to be made as per the orders impugned is concerned, it is seen that the Honourable Apex Court has rendered the judgment on 27.03.1996. Admittedly, the Respondents are parties to the said judgment. The Circular was issued on 02.06.1989 and the Petitioner was appointed by the Respondents only on 29.01.1990. The pay scale was fixed with effect from 30.04.1990. As submitted by the learned Counsel appearing for the Respondents the anomaly came to the notice of the Respondents only in pursuant to an audit objection. Therefore, the facts clearly demonstrate that the Petitioner has no act or part in the fixation of pay scale. Admittedly, the pay scale has been fixed by the Respondents on their own though inadvertently. The question for consideration is, can the Petitioner be penalised for the same? The answer has to be in the negative. There was no recovery on the Petitioner from the date of the fixation of pay scale till the passing of the orders impugned. Except by stating during arguments that it came into light only during audit objection, no other plausible explanation has been given for fixing the pay scale wrongly and then continuing with it over the years. Right from the fixation of the pay scale with effect from 30.04.1990 till the year 2002, no recovery has been made. The Respondents are quite aware of the orders passed by the Division Bench of the High Court of Kerala which was passed in the year 1992 and the subsequent affirmation by the Honourable Apex Court in the year 1996. This Court finds clear negligence and mistake on the part of the Respondents which continued over the years and there is no misrepresentation or false statement by the Petitioner as against the inconvenience and hardship that would be caused to him. Therefore, this Court is of the view that considering the fact of this case, there is no justification on the part of the Respondents to recover the amount paid in excess till the passing of the order dated 25.04.2002.

Whether the Respondents are entitled to recover the payment after the impugned order dated 25.04.2002:

14. Admittedly when the Writ Petition was filed the legal issue has already been settled finally by the pronouncement by the Honourable Apex Court. Therefore, there is nothing to adjudicate on the order impugned in so far as the merits of the case are concerned. Merely because this Court has granted an interim order

which was continued thereafter and the Petitioner has retired in the year 2010 can it be said that a different treatment is given to him than the other employees when there is no mistake or wrongful action on the part of the Respondents. In other words, while it can be said that it was the Respondents who are responsible for the payment made between the pay fixation till the passing of the order impugned it can never be said that even after the impugned order is passed, there shall be no recovery. The power under Article 226 of the Constitution of India is extraordinary and discretionary. It is trite law that once a Writ Petition is dismissed, the interim orders also go. The principle of *actus curiae neminem gravabit* has been well settled. A person who has got the benefit of the interim order has to surrender the said benefit when the Writ Petition is dismissed. Considering the said issue, the Honourable Apex Court in *Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another*, has held in the following manner:

16... The paragraph concerned which has also been quoted by the High Court is as under: (SCC p.784c-e)

The doctrine of *actus curiae neminem gravabit* is not confined in its application only to such acts of the Court which are erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand: (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost.

15. The said judgment of the Honourable Apex Court has been quoted with approval in *Cantonment Board, Meerut and Another Vs. K.P. Singh and Others*, , the relevant paragraph which is extracted herein:

20. It was argued in *Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another*, that the act of the Appellants quarrying the granite stones and exporting the same was accompanied by payment of royalty and issuance of transport permits by the authorities of the State and though done under the interim orders of this Court was nevertheless a lawful and bona fide act. According to the Appellant, the mining lease in favour of the Appellants were bound to be held to be valid in view of the interim orders passed by this Court that they could not be held liable for the payment of price of granite blocks. The Court held that the demand of the State of Karnataka of the

price of mineral could not be said to be a levy of penalty or penal action. It was further observed that though the Appellants were allowed the mining by way of an interim order during the pendency of the earlier appeals, the factual transport permits were obtained by the Appellants only after the dismissal of their appeals. The Court recorded a final order that the Appellants' plea that they were ignorant of the dismissal of the appeals could not be accepted and entertained.

21. The Court then referred to the decision in *South Eastern Coalfields Ltd. Vs. State of M.P. and Others*, where the doctrine of *actus curiae neminem gravabit* was considered and elaborated, holding this doctrine to be the principle of restitution. Considering the facts of the case in para 11, this Court observed that: *Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another*,

11. ... But for the interim orders passed by this Court, there is no difference between the Appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of Sub-section (5) of Section 21. As the Appellants have lost from the Court, they cannot be allowed to retain the benefit earned by them under the interim orders of the Court.

(Emphasis supplied)

The Court affirmed the High Court's finding that the Appellants were liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders.

22. We have already explained the observations of this Court in *Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another*, in para 10 (in para 16 above) in the light of the facts of this case and it is clear that the Appellants cannot take advantage and claim refund because of the fact that this was their voluntary offer and they were not directed to pay the amount that they did. In view of this, we find that the High Court's order is quite unsustainable. We therefore, set aside that order and hold that the Cantonment Board would not be liable to refund anything in favour of Respondents 1 and 2 who have enjoyed the rights of collection of toll on the basis of their own voluntary offer made before the High Court which the High Court has merely accepted by its order dated 8-11-2006. With this observation, the appeal is allowed. It shall not now be necessary for the Respondent to consider the representation made by Respondents 1 and 2. The direction to that effect by the High Court is also set aside. Costs are estimated at Rs. 50,000.

16. Similarly, in *KALABHARATI ADVERTISING vs. H.V. NARICHANIA* ((2010) 7 MLJ 1043), it has been held by the Honourable Apex Court in the following manner:

15. No litigant can derive any benefit from the mere pendency of a case in a Court of Law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order

stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the Court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim "*Actus Curiae neminem gravabit*", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a situation, the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. (vide: *A.R. Sircar (Dr) v. State of U.P.*, 1993 Supp.(2) SCC 734; *Shiv Shankar and Others Vs. Board of Directors, U.P.S.R.T.C. and Another*, ; *Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another*, ; *M/S. GTC Industries Limited Vs. Union of India and Others*, ; and *Jaipur Municipal Corporation Vs. C.L. Mishra*, .

17. Hence, by applying the said ratio of the Honourable Apex Court this Court is of the considered view that merely because the Petitioner obtained an order of stay of the order impugned which has been already upheld by the Honourable Apex Court it cannot be said that the said sum can never be recovered.

18. In other words, all the benefits given to a party during pendency of the Writ Petition would automatically vanish as admittedly there are interim arrangements. Therefore, merely because the Petitioner has obtained interim orders which were continued till now and he has retired in the year 2010, it cannot be said that the excess payment made to him shall not be recovered. The Petitioner knew that he had to pay. It is he who challenges the order impugned. Therefore on the failure of the Writ Petition he has to face the consequences. It is also to be seen that at the time of filing the Writ Petition, the Petitioner was an employee. Except him, through out the country the impugned Circular has been implemented against the identically placed other re-employed ex-servicemen working with the Respondents. The recovery was also made in those cases where interim orders have been obtained pending the Court proceedings. Therefore, the Petitioner cannot be placed on a higher pedestal than the other employees.

19. It is also an important factor to note that the Petitioner has been receiving the pension for the service rendered by him while he was in service in the defence force. In other words, is the Petitioner entitled to get benefits at both ends which the Circular seeks to prevent? The answer has to be in the native. Therefore, this Court is of the considered view that after the passing of the impugned order dated 25.04.2002, the Petitioner is not entitled for any direction from this Court forbearing the Respondents from recovering the excess amount paid as it has been paid only in pursuant to the interim orders passed by this Court.

20. In *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, , the

Honourable Apex Court has observed as follows:

11. Although we have held that the Petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 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 Respondents, the Petitioners being in no way responsible for the same.

21. Similarly, in *Sahib Ram Vs. State of Haryana and Others*, , it has been held as follows:

5. Admittedly the Appellant does not possess the required educational qualifications. Under the circumstances the Appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the Appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the Appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the Appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the Appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.

22. The Honourable Apex Court in *Syed Abdul Qadir and Others Vs. State of Bihar and Others*, has held as follows:

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 and Others*, , *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, , *Union of India (UOI) and Another Vs. M. Bhaskar and Others*, , *V. Gangaram Vs. Regional Joint Director and others*, , *Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others*, , *Purshottam Lal Das and Others Vs. The State of Bihar and Others*, , *Punjab National Bank and Others Vs. Manjeet Singh and Another*, and *Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.* .

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 counter-affidavit, 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.

60. Learned Counsel also submitted that prior to the interim order passed by this Court on 7-4-2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some instalments/ amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the Appellant teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.

23. A Division Bench of the Honourable Apex Court in Bhakra Beas Management Board Vs. Krishan Kumar Vij and Another, has held in the following manner:

38. It is not in dispute that all the Respondents of various appeals have since demitted the office on attaining the age of superannuation. While they were in service, may be on account of the orders of the High Court, to save itself from being hauled up for committing contempt of Court, the Board has made payments to them towards arrears, etc. After such a long lapse of time, more so, when the Respondents have already retired, it will be harsh on our part to direct recovery thereof. Thus, we direct that the amounts already paid to the Respondents would not be recovered by the Board.

24. In a recent pronouncement, the Honourable Apex Court in Union of India (UOI) and Others Vs. R. Vasudeva Murthy and Others, has observed as follows:

21. We make it clear that if any of the employees have been given the benefit of the OM and payments have been made by the Union of India and/or the Department of Telecommunications, it would not be entitled to recovery thereof from the Draughtsmen as it would be too harsh and unreasonable to ask for refund after such a long lapse of time.

25. The above pronouncements of the Honourable Apex Court have no application to the present case on hand in so far as the recovery sought to be made after the passing of the order impugned is concerned. The Honourable

Apex Court in all those cases was pleased to hold that when the mistake is not with the employee concerned, there cannot be any recovery. Those judgments were also rendered after deciding the case on merits against the employees concerned. The facts on hand are totally different than those involved in the Honourable Apex Court. The legal issue involved in the Writ Petition has already been decided even before the filing of the case. The Petitioner herein is very much aware of the consequences. Further except the Petitioner the impugned Circular has been implemented to all others similarly placed like him throughout the country. The Honourable Apex Court in those judgments was pleased to hold that the excess amount was made due to the mistake of the employer concerned.

26. Therefore, the ratio laid down by the Honourable Apex Court can be made applicable only for the period between the original payment made till the passing of the order impugned and not thereafter. It was further observed by the Honourable Apex Court that the employee cannot be faulted because he did not know that the amount as paid was more than what he was entitled to. Hence, when there was a bonafide mistake on the part of the Respondents over which an employee has no role, in such a situation recovery cannot be made. Therefore, the law laid down by the Honourable Apex Court in the above said judgments cannot be made applicable to the case of the Petitioner after the passing of the impugned order dated 25.04.2002.

27. Hence, on a consideration of the facts as well as the legal issues, this Court is of the view that the Writ Petition is liable to be allowed in part in so far as the recovery sought to be made till the passing of the order impugned dated 25.04.2002. In all other respects, the Writ Petition is dismissed. It is made clear that for the excess amount payable by the Petitioner after the passing of the impugned order, the Respondents shall consider the recovery in installments taking into consideration of the hardship to the Petitioner.

28. The Writ Petition is ordered accordingly. No costs.