
(2014) 07 AHC CK 0302

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14989 of 2011

Shakuntala Devi Gupta

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : (2014) 7 ADJ 394 : (2014) 142 FLR 667 : (2014) 3 UPLBEC 2271

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Sanjay Agrawal, Siddhartha Khare and Vatsal Srivastava, Advocate for the Appellant; A.K. Mehrotra and P.K. Tripathi, Advocate for the Respondent

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J.—The Petitioner, who had retired as an assistant teacher from the school at Parichha Thermal Power Project, Parichha, Jhansi, run and managed by Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd., Lucknow (hereinafter referred to as "U.P.R.V.U.N.L.") has prayed for quashing the office memorandum dated 11.1.2011, by which office memorandum dated 12.1.2009 has been amended and it was provided that the salary of the petitioner in the third time scale shall be in the pay-scale of Rs. 5300-8600 and not Rs. 8550-13500, as fixed earlier and for a mandamus for paying retiral benefits treating her to have retired in the pay-scale of Rs. 8550-13500. The petitioner was initially appointed as Assistant Teacher (Primary) in 1981, in a primary school in the name of Bal Shiksha Niketan being run by a private Management, in a building provided by erstwhile U.P. State Electricity Board (hereinafter referred to as "Board"), at Parichha Thermal Power Project, Jhansi. Subsequently, the state Government permitted the Board to start its own school upto High School level vide letter No. 3316 dated 31.5.1985. It also provided for the mechanism for recruitment of teachers. The building given to Bal Shiksha Niketan was got vacated and thereafter, Board's own primary school was started in the same building in the year 1985. The petitioner was not selected for appointment as the

Assistant teacher. She filed Writ Petition No. 18013 of 1985 for direction to the respondents to appoint her as Assistant Teacher in the school established by the Board. During the pendency of the writ petition, the respondents agreed to appoint her on temporary basis, subject to her withdrawing the writ petition. The petitioner withdrew the writ petition. Thereafter, the petitioner was appointed as Assistant Teacher (Primary) on ad hoc basis, in the pay-scale of Rs. 1100-1575 vide appointment letter dated 31.1.1990, for one academic session. The said appointment was accorded due approval by District Basic Shiksha Adhikari, Jhansi by order dated 22.3.1990. She was permitted to continue in service and under the Office Memorandum dated 17.4.2002, her services were regularised. There is no dispute between the parties regarding these facts.

2. On 11.5.1998, Board issued Office Memorandum providing that the pay-scale of Rs. 490-750 mentioned at item No. 4 of Board's previous Office Memorandum dated 30.11.1987 which was revised to Rs. 1100-1575 w.e.f. 1.4.1984 shall stand substituted by pay-scale of Rs. 1200-1800. Paragraph 3 thereof, mentioned that pay-scale at item No. 3 being Rs. 425-604, which was revised to Rs. 1100-1575, shall continue to be the same. The dispute came into existence on account of a particular construction given to the said Board's Office Memorandum dated 11.5.1998. The Management of the Parichha Thermal Power Project, Jhansi applying Board's Office Memorandum dated 11.5.1998, issued an order dated 29.9.2000, whereby, the petitioner was placed in the pay-scale of Rs. 1200-1800, since the date of her initial appointment on 1.2.1990. It seems that other teachers of the Project, who were appointed prior to the petitioner when pay-scale for such post was Rs. 425-604 and were placed in revised pay-scale of Rs. 1100-1575, as per Board's Office Memorandum dated 30.11.1987, were not given pay-scale of Rs. 1200-1800. They felt dissatisfied and represented to the authorities for their pay-scale being also revised to Rs. 1200-1800. The Deputy General Manager (Head Office) vide letter dated 25.9.2004 to the General Manager, Human Resources and Administration, U.P.R.V.U.N.L., invited his attention towards disparity in pay-scale of two sets of teachers working in the same Project and recommended for giving uniform Day-scale of Rs. 1200-1800 to all the teachers. Subsequently, Company Secretary of U.P.R.V.U.N.L. sought clarification from the General Manager of the Project as to how teachers working in the same Project are given two different grades. The matter remained pending and in the meantime, the petitioner was granted II Time Scale of Rs. 5300-9100 on completion of 14 years of service and Third Time Scale of Rs. 8,550-13,500 on completion of 19 years of service by Office Memorandum dated 24.4.2010. Thus, the petitioner drew the salary in the scale of Rs. 8,550-13,500 nil she retired on 30.6.2010.

3. The petitioner forwarded her papers for fixation of pension and for payment of retiral benefits. Thereupon, the matter was examined for the purposes of calculating the retiral benefits, whereupon, it transpired that the fixation of salary of the petitioner in the pay-scale of Rs. 1,200-1,800 was erroneous. Consequently, the Assistant Accounts Officer by letter dated 5.7.2010 to the

Executive Engineer of the Project suggested for taking remedial measures. It was pointed out that in the meeting of the Management with the officials of the project dated 22.4.2010, wherein it was decided to grant to the petitioner the III Time Scale of Rs. 8,550-13,500, the correct facts were concealed it was misrepresented that since after 1.4.1984, all teachers working in the pay-scale of Rs. 1,100-1,575 are being treated to be in pay scale of Rs. 1200-1800 and in this regard proposal had already been sent for approval by the U.P.R.V.U.N.L., which was likely to be received within a short time. On such misrepresentation, the petitioner was accorded Third Time Scale of Rs. 8,550-13,50(c). However, no such approval was granted by U.P.R.V.U.N.L.. He, therefore, advised for carrying out correction in the order granting Third Time Scale to the petitioner by amending it to Rs. 5,300-9,100. This was felt necessary to expedite fixation of pension and retrial benefits of the petitioner. Pursuant thereto, the impugned Office Memorandum dated 11.1.2011 was issued, by which earlier order of the Bound was amended and it was provided that the Third Time Scale to the petitioner shall be in the pay-scale of Rs. 5300-8600. Challenging the said order, the petitioner has filed the present writ petition and for a mandamus to the respondents to pay retrial benefits to the by treating her to have retired in the grade of Rs. 8,550-13,500.

4. A counter-affidavit has been filed on behalf of respondent Nos. 3 to 10, in which it is stated that 14 posts of teachers for primary schools were sanctioned by Board's order dated 25.6.1987 in the pay-scale of Rs. 425-604. The post on which the petitioner came to be appointed in fine year 1990, is one amongst these posts. By Board's order dated 30.11.1987, posts in the pay-scale of Rs. 425-604 and also in the pay-scale of Rs. 490-750 were granted revised pay-scale of Rs. 1,100-1,575 w.e.f. 1.4.1984. In 1990, when the petitioner was appointed, the aforesaid pay-scale of Rs. 425-604 stood revised to Rs. 100-1,575. Consequently, the petitioner was appointed in the pay-scale of Rs. 1,100-1,575. Subsequently, Board's order dated 11.5.1998 was issued, which partially modified earlier Board's order dated 30.11.1987 by providing that posts at item No. 4 in Board's order dated 30.11.1987 i.e. in the pay-scale of Rs. 490-750 shall stand revised to Rs. 1200-1800. Paragraph 3 of the Office Memorandum dated 11.5.1998 further clarified that posts in the pay-scale of Rs. 425-604 would continue to draw revised pay-scale of Rs. 1100-1575. Thus, the posts of assistant teacher in the institution being in the pay-scale of Rs. 425-604 were never granted revised pay-scale off Rs. 1200-1800 and the order dated 29.9.2000 fixing salary of the petitioner in the pay-scale of Rs. 1,200-1,800 and 25.9.2003 providing II Time Scale of Rs. 5,300-9,100, were issued under misconception. It is further stated that by Board's Office Memorandum dated 25.2.1989, employees were granted first, Second and Third Time Scale after completion of 9, 16 and 21 years of service. It was partially modified by Office Memorandum No. 169 dated 29.9.1998, where under, period of Second and Third Time Scale were reduced to 14 and 19 years, respectively. The petitioner, who was appointed against one of the posts in the pay-scale of Rs. 425-604, which at

the time of appointment of the petitioner stood revised to Rs. 1,100-1,575, was having First Time Scale of Rs. 4,200-6,400, Second Time Scale of Rs. 4,500-7,500 and Third Time Scale of Rs. 5,300-8,600. The petitioner was wrongly given Second Time Scale of Rs. 5,300-9,100 and Third Time Scale of Rs. 8,550-13,500. The impugned Office Memorandum was, thus, rightly issued. The respondents have full right to make corrections and amendments in wrong fixation of pay and the petitioner cannot claim benefit of a mistake committed on part of the officials of the Project. She was entitled to pay-scale as per Board's order and there was no order of the Board revising salary for the posts in She pay-scale of Rs. 425-604 to Rs. 1,200-1,800 and corresponding enhancements therein.

5. The petitioner had filed a rejoinder-affidavit, in which it is claimed that certain other teachers were also appointed alongwith the petitioner in the pay-scale of Rs. 1,100-1,575 and their salary were also revised to Rs. 1,200-1,800. It is further claimed that the petitioner was never appointed in the pay-scale of Rs. 425-604 and thus, the respondents are making an imaginary distinction by treating the petitioner to be in the said scale. The time scales granted to the petitioner from time to time were strictly in accordance with the Office Memorandum dated 11-5.1998 and the impugned order is wholly illegal. It is contend that the result of Board's order dated 30.11.1987 was that two pay-scales of Rs. 425-604 and Rs. 490-750 were merged and were placed under revised pay-scale of Rs. 1,100-1,575 and it is not open to the respondents to revert back to the old position.

6. I have heard Sri Ashok Khare, Senior Advocate assisted by Sri Siddharth Khare for the petitioner, learned standing counsel for respondent No. 1 and Sri Anil Kumar Mehrotra on behalf of respondent Nos. 3 to 10. With their consent, this writ petition was heard finally as per Rules of the Court.

7. It is common ground between the parties that creation of posts, pay-scales and their revision were controlled by erstwhile U.P. State Electricity Board and now U.P.R.V.U.N.L., having stepped into its shoes. The State Government vide letter No. 3316 dated 31.5.1985 permitted U.P. State Electricity Board (for short the Board") to start its own school upto High School level The said letter also provided for recruitment of teachers by a Selection Committee headed by Chief Project Manager and two other members. It was followed by Board's Order dated 25.6.1987, whereby, 14 posts of primary teachers were sanctioned for the School in the pay-scale of Rs. 425-604. By Board's Order dated 30.11.1987, the pay-scales were revised w.e.f. 1.4.1984. It postulates that posts in the pay-scale of Rs. 425-604 and Rs. 490-750 shall stand revised to Rs. 1,100-1,575. Another Board Order dated 11.5.1998 was issued, which provided that posts, which were in the pay-scale of Rs. 490-750 at item No. 4 in the Board Order dated 30.11.1987, shall get revised to pay-scale of Rs. 1,200-1,800 w.e.f. 1.4.1984 instead of Rs. 1,100-1,575. The posts in the pay-scale of Rs. 425-604 at item No. 3, shall continue to be in the revised pay-scale of Rs. 1,100-1,575. Thus,

Board's order dated 11.5.1998 was in shape of amendment to the earlier Board's order dated 30.11.1987. The result was that employees of higher pay-scale of Rs. 490-750, which as a result of Board's order dated 30.11.1987, were placed at par with the employees of lower pay-scale of Rs. 425-604, were held entitled to higher revised pay-scale of Rs. 1,200-1,800 w.e.f. the same date i.e. 1.4.1984. It did not alter the pay-scale for the post of 14 teachers of the primary school which were sanctioned by Board's order dated 15.6.1987 in the pay-scale of Rs. 425-604. These posts were to continue in the revised pay-scale of Rs. 1100-1575 being at item No. 3 of Board's Order dated 30.11.1987. This is amply clear from paragraph 3 of the Board's Order dated 11.5.1998, which is to the following effect:

8. Learned counsel for the petitioner submitted that the petitioner was never appointed in the pay-scale of Rs. 425-604. Her appointment for the first time, was in the pay-scale Rs. 1,100-1,575. It was revised to Rs. 1,200-1,800, as per Board's order dated 11.5.1998. Thus, any reference to the earlier pay-scale of Rs. 425-604 is illogical and irrational. It was further contended that after two pay-scales were merged into one, the distinction now being made, is imaginary.

9. However, I find that the petitioner could not dispute that the appointment of the petitioner was on one of the posts created by Board's order dated 25-06-1987. Prior to it, there was no sanctioned post of teacher in the primary school, which was admittedly being run by a private management. The posts were sanctioned in the pay-scale of Rs. 425-604. As discussed above, the revised pay-scales for these posts as per Board's order dated 30.11.1987, was Rs. 1,100-1,575 w.e.f. 1.4.1984. When the petitioner was appointed, the revised pay-scale was applicable and thus, she was placed in the pay-scale of Rs. 1,100-1,575. The posts in the pay-scale of Rs. 425-604 which were revised by Board's order dated 30.11.1987 to Rs. 1,100-1,575 were never granted revised pay-scale of Rs. 1,200-1,800. It was only the posts in the higher original pay-scale of Rs. 490-750, which were given revised pay-scale of Rs. 1,200-1,800. In order to understand the true import of Board's order dated 11.5.1998, it was, thus, essential to refer to the original pay-scales. The respondents have rightly taken the stand that the post on which the petitioner was appointed, being a post in the original pay-scale of Rs. 425-604, was revised to Rs. 1,100-1,575 and never to Rs. 1,200-1,800.

10. It is noteworthy that the stand of the petitioner that she was given revised pay-scale of Rs. 1,100-1,575 and then Rs. 1,200-1,800 as per Board's order dated 11.5.1998, is not correct. A close scrutiny of various Board's orders discussed above, would reveal that the pay-scale of Rs. 1,100-1,575 was never revised to Rs. 1200-1800. In fact, Board's order dated 11.5.1998 only amends the earlier Board's Order dated 30.11.1987 by providing that in so far as it relates to original higher pay-scale of Rs. 490-750, the revised pay-scale would be Rs. 1,200-1,800 instead of Rs. 1,100-1,575. It is for the said reason that the revised pay-scale of Rs. 1200-1800 became payable to employees of higher pay-

scale of Rs. 490-750 from the same date i.e. 1.4.1984 when the pay-scales were revised for employees in the other grades.

11. This is also clear from the order dated 29.9.2000 when the petitioner was purportedly given revised pay-scale of Rs. 1,200-1,800, though wrongly, with effect from the date of initial appointment on 1.2.1990. Thus, the respondents also rightly never treated the Office Memorandum dated 11.5.1998 as further revision of pay-scales from Rs. 1,100-1,575 to Rs. 1,200-1,800 but as amendment to the Board's order dated 30.11.1987. The mistake they have committed, qua the petitioner, is that they ignored paragraph 3 of the Office Memorandum dated 11.5.1998, which provided that posts in the pay-scale of Rs. 425-604 would continue to be governed by Board's Order dated 30.11.1987, for which the revised pay-scale would continue to be Rs. 1,100-1,575. Thus, for the said posts, the revised pay-scale was to continue as Rs. 1,100-1,575 and not Rs. 1,200-1,800.

12. It seems that the Board's Order dated 11.5.1998 was an effort to remove the anomaly which came into existence with the issuance of Office Memorandum dated 30.11.1987, by which two pay-scales; one higher being Rs. 490-750 and the other lower being Rs. 425-604, were both accorded revised pay-scale of Rs. 1,100-1,575. After the Board's order dated 11.5.1998, the posts in the higher pay-scale of Rs. 490-750 were revised to Rs. 12,000-18,000 and posts in the lower pay-scale Rs. 425-604 would continue to get revised pay-scale of Rs. 1,100-1,575, as per earlier Board's order dated 30.11.1987.

13. It is noticeable to mention here that the petitioner had never challenged the validity of the Board's Office Memorandum dated 11.5.1998. There is neither any pleading in this regard nor any argument was raised at the time of hearing. Once Office Memorandum dated 11.5.1998 was issued, it had to be given full force, including clause 3 thereof, which specifically dis-entitles the petitioner to revised pay-scale of Rs. 1,200-1,800.

14. It is noteworthy that First Time Scale for pay-scale of Rs. 425-604 was Rs. 4,200-6,400, Second Time Scale was Rs. 4,500-7,500 and Third Time Scale was Rs. 5,300-8,600. However, the respondents have repeated the mistake which they committed while issuing Office Memorandum dated 29.9.2000, whereby, the petitioner was treated to have been appointed in the pay-scale of Rs. 1,200-1,800 by granting corresponding Second Time Scale of Rs. 5,300-9,100 and Third Time Scale of Rs. 8,550-13,500. But with the issuance of impugned Office Memorandum, the mistake committed in the past has been rectified.

15. It would be apt to make one clarification before parting with the issue. The impugned Board's Order seeks to amend Office Memorandum dated 12.1.2009. In case of the Petitioner the third time scale was granted by Office Memorandum dated 24.4.2010 and not 12.1.2009. In fact, Office Memorandum dated 12.1.2009 relates to other teachers whose names find place in the impugned Board Order. This is evident from Paragraph 1 of the minutes of the meeting of

the management and officials of the project dated 22.4.2010 (Annexure 14). The order dated 24.4.2010 in case of the petitioner granting third time scale was issued as per decision taken in the said meeting wherein, it was decided that the petitioner be given similar benefits as extended to other teachers vide Office Memorandum dated 12.1.2009. This is also clear from Office Memorandum dated 24.4.2010 issued in relation to the petitioner placing reliance on Office Memorandum dated 12.1.2009 (by mistake date mentioned as 12.1.2010). However, the effect of the Impugned Board order dated 11.1.2011 is not whittled down by mere non-mention of Office Memorandum dated 24.4.2010 issued in relation to the Petitioner. The intention is clear and unambiguous i.e. earlier order granting third time scale to the teachers was not correct and it should be Rs. 5300-8600. Accordingly, such omission will not affect the validity of impugned Board's Order dated 11.1.2011.

16. The question which now arises for consideration is whether the respondents are estopped from applying correct pay-scale and whether the petitioner is entitled to draw retiral benefits by treating her to have retired in the pay-scale of Rs. 8,550-13,500.

17. In Syed Abdul Qadir and Others Vs. State of Bihar and Others, somewhat similar controversy arose. The appellants therein were Assistant Teachers in a nationalized school of Government of Bihar. On 20.2.1993, the Finance Department of Government of Bihar issued a resolution dated 18.12.1989, whereby earlier resolution for revised senior scale on completion of 12 years of service in the basic grade for fixation of pay in the senior scale as per F.R. 22-C was amended to the effect that pay of these teachers, on completion of 12 years of service in the basic grade shall be fixed as per Rule 78(ii) of the Bihar Service Code. Under F.R. 22-C there was a provision for grant of additional increment on promotion to higher post carrying greater responsibilities, though there was no such provision under Rule 78(ii). The appellants on wrong interpretation were given higher pay-scale as per Rule F.R. 22-C. On 16.11.2000, after coming to know of wrong fixation of pay, the Finance Department issued an order dated 16.11.2000 that fixation in term of F.R. 22-C is irregular and directed for recovery of excess payment. The Apex Court upheld the Government decision to revise its previous order for pay fixation, but restrained the authorities from recovering excess payment. It was observed as under:

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.

18. In a more recent judgment in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, the Apex Court was considering the question whether mistake committed in wrongly fixing 5th and 6th pay-scales of teachers based on wrong interpretation of 5th Pay Commission report can be corrected and excess payments recovered from the teachers. After considering all earlier judgments including the judgment in the case of Syed Abdul Qadir (supra), the Apex Court held as under:

"14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situation. 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 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 of 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 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."

18. 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 tax excess payment made be recovered from the appellant's salary in twelve equal monthly instalments starting from October 2012. The appeal stands dismissed with no order as to costs. IA Nos. 2 and 3 are disposed of."

19. Thus, the Apex Court had clearly opined that a wrong order of pay fixation can always be corrected and had gone to the extent of holding that excess payment made to an employee can even be recovered subject to certain exceptions.

20. Counsel for the Respondent has placed reliance on the judgment of a learned

single judge of our Court in Onkar Nath Srivastava v. State of U.P. and others (writ petition No. 55887 of 2013) decided on 8.10.2013, wherein, it is held as under:

"19. The excess money received by petitioner is not anybody's private money but it has come from the coffer of public exchequer. It is a public money contributed by tax payers and hard earned money of public at large. If an excess money is allowed to be retained by a person who is not authorised, that would result in denying user and consumption of that money other than the purpose for which it is meant.

20. Administration, whether in executive or judiciary, holds public funds in trust and with responsibility of spending it strictly in the manner they are required to do so and not to enrich anyone or waste money by its unmindful, unauthorised and illegal acts. If any such thing has happened even if unknowingly and in deliberately, the administration is legally, morally and by any standard of civilised society, is bound to restore back such wasteful expenditure to the public exchequer so that it may thereafter be utilised in the manner and for the purpose, so prescribed. Any attempt on the part of administration to allow an employee to retain certain money, which the Administration has wrongly paid to him, though the employee was not entitled to the same, or, any act on the part of administration, in not realising the said amount from the employee, is liable to be treated as breach of trust. Such decision would amount to not only waste of public money but also an attempt to perpetuate an illegal act. It is not a private property to which one can show any attitude of charity and so called broad heart and magnanimity. This would be against any principle of administrative law. Simultaneously, an employee if retains something which he did not owe, he being also equally responsible to the public and public found holding an office of trust, is bound to return/refund it.

22. Every single penny constituting consolidated fund of India/State comes from hard earned money of tax payers and others. It has to be utilized strictly in the manner in which the competent authority i.e., the legislature has resolved and decided. No amount of public exchequer can be allowed to be squandered as a matter of charity or otherwise to be retained by a Government servant who is not entitled to obtain such money but by another Government Servant has been allowed to withdraw from public exchequer, may be, by his mistake or ma-be collusive mistake or otherwise."

21. A. Division Bench of our Court in Special Appeal So. 503 of 2008: State of U.S. and others v. Vindeshwari Prasad. Singh, decided on 28.7.2009, held as under:

"From a plain reading of the aforesaid provision it is evident that a person to whom money has been paid by mistake is obliged to return the same. In my opinion an employee not entitled to receive monetary benefit gets it, it becomes a case of unjust enrichment and restitution in case of unjust enrichment is an

accepted principle for ensuring Justice in appropriate cases. In my opinion in a case of mistake clear, plain and simple, excess amount paid to and employee can be recovered after retirement despite the fact that he had not made any misrepresentation or played fraud. There is no legal impediment in ordering for recovery from a retired employee such monetary benefits, which he had received on account of mistake and not entitled to such benefits. However, I would hasten to add that a mistake, pure and simple though justifies recovery of excess amount paid but in a case in which two interpretations are possible and one was consciously approved and benefit given to an employee by the competent authority but such decision in the ultimate analysis and long process of reasoning, later on is found incorrect, it may be possible to correct the same at a latter stage but the amount already paid in the light of the earlier decision is not fit to be recovered. In other words, excess payment is made upon reasonably possible view taken by competent authority without fraud or misrepresentation, the excess payment cannot be recovered. Excess payment is possible to be made by the order of the employer. It is also possible by interim or final order of the Court, which ultimately is found to be erroneous. In case of former, a recovery is permissible under the condition enumerated above. However, in latter case, it depends upon the facts and circumstances of each case and it is primarily within the discretion of the Court."

(emphasis added)

22. In the present case, the mistake came to be noted by Company Secretary, as is evident from the letter dated 30.12.2006. However, no remedial action was taken. Thereafter, by Office Memorandum dated 24.8.2009 Third Time Scale of Rs. 5,300-9,100 was sanctioned w.e.f. 1.2.2009. It was followed by meeting of the representatives of the Management and the officials dated 22.4.2010, which recommended for grant of Third Time Scale of Rs. 8,550-13,500, followed by formal order dated 24.4.2010. Close to the heels comes the letter dated 5.7.2010 by Assistant Accounts Officer which fathoms the mystery behind the decision taken in the meeting dated 22.4.2010. It states that in the meeting called by Company Secretary, it was informed that all teachers appointed after 1.4.1984 in the pay-scale of Rs. 1,100-1,575 are being treated to be in the pay-scale of Rs. 1200-1800 and steps have already been taken to obtain formal approval of U.P.R.V.U.N.L. in this regard. It was on such representation that the petitioner was granted corresponding Third Time Scale of Rs. 8,550-13,500. It is further mentioned in the said letter that the petitioner was due to retire shortly and thus, it was felt that the petitioner be granted Third Time Scale, even without awaiting formal approval of U.P.R.V.U.N.L.

23. The petitioner retired on 30.6.2010 and started exerting pressure for grant of pensionary benefits treating her to have retired in the pay-scale of Rs. 8,550-13,500. The Assistant Accounts Officer by letter dated 5.7.2010 recommended to the Executive Engineer of the Project that in absence of approval from U.P.R.V.U.N.L. regarding revision of pay-scale of primary teacher

to Rs. 1,200-1,800, it had become necessary to amend the order fixing Third Time Scale of the petitioner in order to quantify the pensionary benefits payable to her, whereupon, the impugned order was passed.

24. Thus, it transpires that there was bona fide belief on the part of the respondents that the petitioner being appointed in the pay-scale of Rs. 1,100-1,575 was covered by first paragraph of Office Memorandum dated 11.5.1998. The mistake could not be detected till it was established by long process of reasoning that she was not entitled to that scale.

25. It seems that because of the said reason, even the respondents have not asked the petitioner to refund the excess payment made to her. There is also no such stand taken in the counter-affidavit, but at the same time, this would not entitle the petitioner to claim retiral benefits by treating her to have retired in the pay-scale of Rs. 8,550-13,500. The respondents cannot be compelled to repeat the mistake again and again. Accordingly, the respondents are directed to fix the pensionary benefits of the petitioner by treating her to have retired in the pay-scale of Rs. 5,300-8,600 as per the impugned Board Order dated 11.1.2011. Since there has been a considerable delay in payment of the pensionary benefits, the petitioner would be entitled to simple interest @ 8% per annum from the date of retirement till the date of actual payment. The respondents are directed to calculate the pensionary benefits and pay the same to the petitioner within a period of two months from the date of production of certified copy of this order before respondent No. 8.

26. In view of the discussion made above, writ petition stands allowed in part to the extent indicated above. No order as to costs.