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A.F.R.

Neutral Citation No. - 2024:AHC-LKO:66845-DB

Court No. - 2

Case :- WRIT - A No. - 6056 of 2024

Petitioner :- Union Of India Thru. Secy. Ministry Of Information And Broadcasting , New Delhi And Others

Respondent :- Arun Prakash Srivastava

Counsel for Petitioner :- Ashwani Kumar Singh

Counsel for Respondent :- Savita Jain

connected with

Case :- WRIT - A No. - 6290 of 2024

Petitioner :- Union Of India Thru. Secy. Ministry Of Information And Broadcasting , New Delhi And Others

Respondent :- Harish Chandra

Counsel for Petitioner :- Varun Pandey

Counsel for Respondent :- Savita Jain

with

Case :- WRIT - A No. - 6494 of 2024

Petitioner :- Union Of India Thru. Secy. Ministry Of Information Broadcasting Govt.India New Delhi And 5 Others

Respondent :- Bhagwan Deen Gautam

Counsel for Petitioner :- Varun Pandey

Counsel for Respondent :- Savita Jain

with

Case :- WRIT - A No. - 7099 of 2024

Petitioner :- Union Of India Thru. Secy. Ministry Of Information And Broadcasting And 4 Others

Respondent :- Lal Bahadur Singh

Counsel for Petitioner :- Ashwani Kumar Singh

Counsel for Respondent :- Savita Jain

with

Case :- WRIT - A No. - 7194 of 2024

Petitioner :- Union Of India Thru. Secy. Ministry. Of Information And Broadcasting New Delhi And 4 Others

Respondent :- Quarban Ahmad

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Counsel for Petitioner :- Ashwani Kumar Singh

Counsel for Respondent :- Raj Kumar Dwivedi

with

Case :- WRIT - A No. - 7195 of 2024

Petitioner :- Union Of India Thru. Secy. Ministry Information And Broadcasting New Delhi And 4 Others

Respondent :- Om Prakash

Counsel for Petitioner :- Ashwani Kumar Singh

Counsel for Respondent :- Raj Kumar Dwivedi

with

Case :- WRIT - A No. - 7216 of 2024

Petitioner :- Union Of India Thru. Secy. Ministry Of Information And Broadcasting New Delhi And 4 Others

Respondent :- Mohd. Naseer

Counsel for Petitioner :- Ashwani Kumar Singh

Counsel for Respondent :- Raj Kumar Dwivedi

with

Case :- WRIT - A No. - 7231 of 2024

Petitioner :- Union Of India Thru. Secy. Ministry Of Info. And Boardcasting New Delhi And 4 Others

Respondent :- Anil Kumar Arora

Counsel for Petitioner :- Ashwani Kumar Singh

Counsel for Respondent :- Savita Jain

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(1) Heard Sri S.B. Pandey, learned Senior Advocate and Deputy Solicitor General of India assisted by Sri Ashwani Kumar Singh, learned counsel for the petitioners in all the petitions and Ms. Savita Jain, learned counsel for the private respondents.

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- (2) By means of this bunch of writ petitions, similar orders of the same nature passed in separate Original Applications involving similar facts and case, have been challenged. Writ-A No.6056 of 2024 has been taken up as the leading writ petition with the consent of the parties.
- (3) The case of the petitioners herein is that all the respondents in this petitions had been granted three promotions/financial upgradation, therefore, in view of three promotions already having been granted to them, they were not entitled to any financial upgradation under the 'Assured Career Progression Scheme (ACPS)' which came into force w.e.f. 01.09.2008 as modified. Nevertheless, they were wrongly granted the benefit of 'Modified Assured Career Progression Scheme (MACPS) (3rd financial upgradation)' w.e.f. 01.09.2008 in the form of Grade Pay Rs.4800/-. They were erroneously given the benefit of 3rd financial upgradation w.e.f. 01.09.2008 vide orders dated 26.07.2010, 18.02.2010, 12.08.2010, 19.04.2010, 15.02.2012, 25.10.2013 and their names figure in the list appended therein. One such order dated 26.07.2010 is annexed at page 26 to 28 of the supplementary affidavit filed by the petitioner in Writ-A No.6056 of 2024, the leading petition.

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- (4) Our attention has been drawn to point 2 of the said order dated 26.07.2010 which contains a specific condition to the effect - *"The pay fixation is subject to post audit and in the light of audit observation, over payment if any shall be recovered from the official in one lump-sum."* Similar condition is there in other orders.
- (5) The submission is that prior to retirement of the respondents, the account section scrutinized their service records and raised an objection on detection of an irregularity in grant of the aforesaid benefit of 3rd financial upgradation as noticed hereinabove and accordingly, a note was put up to the DDO on 17.05.2016 (Writ-A No.6056 of 2024) to the effect- *"please recover the over payment amount due to wrong fixation from 01.09.2008 to 31.05.2016 in the grade pay of Rs.4800/- and sent the recovery statement duly attested by DDO along with pension paper."* This was prior to the retirement of the respondents. Similar audit objections were raised in case of all the respondents albeit on different dates.
- (6) It appears that the private respondents were aware of this audit objection which was referable to the condition mentioned in the order dated 26.07.2010 etc., as such, the

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respondents moved applications copies of which are on record having been annexed with the supplementary affidavit, asking the Deputy Director General, Doordarshan Centre, Lucknow to kindly finalize their pension matter taking into consideration the audit objection of the Accounts and Audit Officer dated 17.05.2016 etc., in pursuance to which, the pay fixation was corrected and thereafter the pension was fixed.

- (7) While disbursing the post retiral dues, the excess payment was deducted therefrom as was permissible in view of the conditions mentioned in the orders dated 26.07.2010 and other orders which the respondents readily accepted without any demur and also in view of their own letter given before their retirement for finalizing their pension in terms of the audit objections which in the context of Writ-A No.6056 of 2024 was served on 17.05.2016. In Writ-A No.7231 of 2024, respondent had given such letter after retirement.
- (8) In the light of the aforesaid facts, reliance has been placed by the petitioners upon a judgment of Hon'ble the Supreme Court in the case of **High Court of Punjab and Haryana and Ors. vs. Jagdev Singh** reported in **AIR 2016 SC 3523**

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wherein Supreme Court of India considered its earlier decision in **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc : (2015) 4 SCC 334** and opined that the principle enunciated at point no. (ii) therein regarding non-recovery of excess payment from retired employees, or employees, who are due to retirement within one year of the order of recovery, being not applicable to a situation such as in the case at hand where the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. It was further observed in the said judgment that the officer furnished an undertaking while opting for revised pay scale is bound by undertaking, therefore, according to learned counsel, an exception was carved out to the application of the earlier decision in **Rafiq Masih (supra)** in the aforesaid manner.

- (9) The submission is that in view of the aforesaid, in the facts of this case, neither the re-fixation of pay nor the recovery ensuing, as a consequence therefrom, was barred by law, in fact, the Tribunal has not interfered with the re-fixation but has interfered with the recovery, ignoring the factual aspects

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as narrated hereinabove, and ignoring the documents referred above which were also on record of the Tribunal and without considering the subsequent decision of Hon'ble the Supreme Court in **Jagdev Singh (supra)** which was also brought on record by it.

- (10) On being confronted, Ms. Savita Jain, counsel for the private respondents submitted that, in the case at hand, no undertaking has been given by the respondents permitting such re-fixation or recovery, however, she does not deny the fact that before the Tribunal, the order of re-fixation of salary or the audit objections were not challenged instead a relief was sought in the form of directions to the respondents therein to pay the post retiral dues, *inter alia*, albeit along with already deducted amount from the gratuity of the petitioners with the interest at market rate i.e. the amount deducted on account of excess payment.
- (11) The contention of the counsel for the respondents was that the Accounts Officer was not entitled to re-fix the pay or order recovery, however, learned counsel did not deny the conditions mentioned in the orders dated 26.07.2010 and other orders as noticed hereinabove nor that the respondents

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had given an application for fixing their pension prior to retirement taking into consideration the audit objection dated 17.05.2016, except in Writ-A No.7231 of 2024. Moreover, the audit objection was not challenged by the respondent in the Original Application.

- (12) She, however, laid great emphasis on another judgment of the Supreme Court of India rendered on **08.08.2024** in **Civil Appeal No(s). 1635 of 2013 : Jagdish Prasad Singh vs. State of Bihar and Others**, wherein it has been held in para 20 that an order directing reduction in pay scale and recovery from the appellant therein was manifestly not preceded by any show cause notice and was, thus, passed in gross violation of principles of natural justice and also that no departmental action could have been initiated against the appellant therein after eight years following his superannuation because the employer employee relationship had come to an end after the appellant's superannuation, to contend that in the facts of the case the judgment of the Tribunal is justified and this Court should not interfere with the same.

(13) Having heard learned counsel for the parties and having perused the records and in view of the facts already noticed hereinabove, what comes out is that all the respondents had already been promoted/granted upgradation under ACP scheme thrice prior to coming into force of the ' Modified Assured Career Progression Scheme (MACPS)' and in the very nature of the said scheme, any financial upgradation would have been made available only if there was stagnation on any post without such promotion/upgradation and the benefits which were admissible thereunder were in the form of three financial upgradation depending upon how many promotions/upgradations have been made/given. In the case at hand, all the respondents had already been promoted/granted upgradation thrice, therefore, there was no application of the 'MACPS', yet erroneously the benefit of financial upgradation was extended to them vide order dated 26.07.2010 and other orders, however, as already noticed, the appellants herein were cautious enough to incorporate a condition therein that the pay fixation consequent to grant of such financial upgradation was subject to post audit and in light of audit objection, over payment, if any, shall be recovered from the officials in one lump sum and that it was being extended to the respondents subject to the said

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condition. They are bound by it as they have never challenged the said order nor the said condition. Now in the light of the said condition, the Audit and Account Section raised an objection that there was over payment on account of erroneous grant of 3rd financial upgradation whereas all the officers had already availed three promotions and, therefore, the benefit was not available, accordingly, recovery was suggested so that the pension paper could be finalized. This audit objection was raised before retirement of the respondents except in the case of Amit Kumar Arora (Writ-A No.7231 of 2024) and was in terms of the condition already referred hereinabove. Most important, all the respondents, submitted separate applications to the higher officials for finalizing their pension taking into consideration these audit objections, therefore, this also while submitting such representation, they acceded to the objections raised by the audit department and cannot resile from the same.

- (14)** If the order dated 26.07.2010 and other similar orders were not on record of the Tribunal then not only the petitioners but also the respondents have to offer an explanation as to why they did not bring it on record because under this very order the benefit was extended to them. In any case, all these

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documents have been filed along with the supplementary affidavit before this Court, a copy of which was served upon the counsel for the respondents but till date no response has been filed to the same nor these documents have been denied. These are official documents and there is no reason for us to disbelieve the same.

(15) In these cases at hand, there is one exception on facts, i.e., in Writ-A No.7231 of 2024, wherein, the respondent- Anil Kumar Arora retired on 31.08.2015 and the re-fixation of pay was done subsequent to his retirement, however, this does not make any difference as the condition contained in the order dated 17.08.2011 was already existing and he was bound by the same. Moreover, he had also submitted an application dated 21.10.2015 for finalizing his pension after taking into consideration the audit objection dated 06.10.2015.

(16) In view of the aforesaid discussions, the judgment relied upon by the counsel for the respondents in **Jagdish Prasad Singh (supra)** and **Rafiq Masih (supra)** are not attracted rather the exception to **Rafiq Masih (supra)** as carved out in the case of **Jagdev Singh (supra)** is squarely applicable.

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The respondents had notice of the fact that, if any, excess payment is made, the same would be liable to be recovered/refunded. Moreover, they themselves submitted an application that their pension be fixed after taking into consideration the audit objections raised on 17.05.2016 and other orders that too, except in one case, prior to their retirement, therefore, we are of the opinion that the Tribunal's judgment which is impugned herein cannot be sustained. The excess payment had already been recovered prior to filing of the Original Applications. The same has not be refunded as yet.

(17) The impugned judgments are quashed in all the petitions. The Original Applications are dismissed. Petitions are **allowed.**

[Om Prakash Shukla, J.] [Rajan Roy, J.]

Order Date :- 26.9.2024

Shubhankar