

GAHC010030072022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1306/2022

SARWAN KUMAR
S/O LATE SHANKAR DAS, P/R/A 704 SYMPHONY FLOOR, M2K, SECTOR 51,
GURGAON, DIST- GURGAON, HARYANA, P/R/O VILL- KHERABAD, DIST-
HOSHIYARPUR, PUNJAB, PIN-144205

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY SECRETARY MINISTRY OF HOME AFFAIRS, NORTH
BLOCK, CENTRAL SECRETARIAT, NEW DELHI-1

2:THE DIRECTOR GENERAL
SASHATRA SEEMA BAL
BLOCK V (EAST)
R.K. PURAM
NEW DELHI-110066

3:THE ASSISTANT DIRECTOR (PERS-I)
O/O DIRECTOR GENERAL
SASHATRA SEEMA BAL
BLOCK V (EAST)
R.K. PURAM
NEW DELHI-110066

4:YJE INSPECTOR GENERAL (PERS)
O/O DIRECTOR GENERAL
SASHATRA SEEMA BAL
BLOCK V (EAST)
R.K. PURAM
NEW DELHI-110066

5:THE INSPECTOR GENERAL
FRONTIER HEADQUARTERS
SSB
HOUSE NO. 345
NIKITA COMPLEX
KHANAPARA
GUWAHATI-781022

6:THE DEPUTY INSPECTOR GENERAL
O/O INSPECTOR GENERAL
FRONTIER HEADQUARTERS
SSB
HOUSE NO. 345
NIKITA COMPLEX
KHANAPARA
GUWAHATI-781022

7:THE COMMANDANT (ADMN)
O/O INSPECTOR GENERAL
FRONTIER HEADQUARTERS
SSB
HOUSE NO. 345
NIKITA COMPLEX
KHANAPARA
GUWAHATI-78102

Advocate for the Petitioner : MR. U K NAIR, MR. U PATHAK,MR H K DAS

Advocate for the Respondent : ASSTT.S.G.I.,

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

Date of hearing : **20.05.2025.**

Date of judgment : **04.06.2025.**

JUDGMENT & ORDER (CAV)

Heard Mr. H. K. Das, learned counsel appearing for the writ petitioner. I have

also heard Ms. B. Sarma, learned Central Government Counsel (CGC) appearing for the respondents.

2. The writ petitioner herein had retired as an Inspector General (IG) under the Sashatra Seema Bal (SSB), on attaining the age of superannuation with effect from 31.01.2020. After his retirement, the writ petitioner had been drawing provisional pension till date as the regular pension of the petitioner has been withheld. Being *inter-alia* aggrieved by the fact that even after the lapse of several years since his retirement, the regular pension of the petitioner has not been sanctioned nor has his retirement dues been paid in full, the instant writ petition has been filed seeking the intervention of this Court. The facts and circumstances of the case, shorn of unnecessary details, are narrated herein below.

3. It appears from the materials available on record that the petitioner herein had originally joined service under the Border Security Force (BSF) in the year 1981 as a Sub-Inspector. In the year 1984, he was appointed as a Gazetted Officer (D.A.G.O.) in the SSB. Over the period of time, the petitioner was promoted on several occasions. Eventually, he was promoted to the rank of Inspector General in the year 2016. While serving in the post of Inspector General, Frontier Headquarters, SSB, Ranikhet, vide order dated 21.11.2017 the petitioner was placed under suspension in exercise of powers conferred under Rule 41(1)(i) of the SSB Rules, 2009 on the ground that a Court of Inquire (COI) was sought to be conducted against him. Subsequently, vide communication dated 25.01.2018, the petitioner was attached at the FHQ, SSB, New Delhi, till completion of the COI contemplated against him. The period of suspension

of the petitioner was to come to an end on 20.02.2018. Therefore, by the order dated 19.02.2018, the period of suspension was extended by another 90 days beyond 20.02.2018. Thereafter, it was extended again for a further period of another 90 days beyond 21.05.2018, by issuing office order dated 21.05.2018. In the meantime, by the order dated 23.03.2018, a Court of Inquiry (COI) was ordered against the petitioner so as to enquire into the circumstances pertaining to alleged (i) misuse of manpower, and (ii) irregularities during the recruitment test of Ct. (Dvr.) and Ct (Tradesmen) in SSB for the year 2017. Accordingly, the writ petitioner was asked to make his statement and also to produce any person as defence witness and/or any evidence in the matter.

4. On 28.03.2018 the petitioner submitted a representation *inter-alia* contending that the extension of the period of his suspension after the lapse of the mandatory period for review was illegal, more so, since there was no progress in the Inquiry. The petitioner had also contended that the respondents have failed to submit charge-sheet during the period of his suspension thus having a vitiating affect on his suspension itself.

5. On 07.08.2018, an additional Court of Inquiry was initiated against the petitioner with instructions issued to him to attend the enquiry on 17.08.2018 at 10 hours in the chamber of Additional Director General of SSB. However, no convening order of the additional Court of Inquiry was furnished to the petitioner. As such, the writ petitioner had requested the Director General of SSB to furnish him with a copy of the convening order dated 07.08.2018. The petitioner participated in the additional

Court of Inquiry. When the matter rested at thus, vide order dated 30.08.2018 issued by the Inspector General (Pers), the suspension of the petitioner was revoked with immediate effect. On 21.05.2019, the petitioner had received a communication intimating him that the COI and the Additional COI have been completed and correspondences with the Ministry of Home Affairs (MHA) was under progress. In the said communication, it was also mentioned that the final outcome of the process will be intimated to him. It is the specifically pleaded case of the petitioner that the respondents have neither intimated him about the outcome of the COI and the Additional COI till today nor is there any departmental proceeding and/or charge-sheet submitted against him in any legal proceeding. As such, according to the writ petitioner, it was not permissible for the authorities to withhold his pension.

6. Apart from the claim pertaining to grant of regular pension, the writ petitioner is also aggrieved by the order dated 04.08.2020 issued by the Commandant (Admin), FTR. HQs, SSB, Guwahati whereby, it was ordered that a sum of Rs.2,93,698/- be recovered from the writ petitioner as over-payment/excess payment. It appears from the materials on record that vide order dated 18.10.2019, financial upgradation under the Non-Functional Financial Upgradation (NFFU) scheme for the "Senior Administrative Grade (SAG)" was granted to the petitioner and the benefits were computed by applying the fitment factor of 2.67. Consequently, arrear amount of pay and allowances for a sum of Rs.4,64,310/-, before deduction of tax, educational cess etc. was paid to the petitioner. However, subsequently it was detected that the correct multiplier to be applied in his case ought to have been 2.57 instead of 2.67.

7. According to the respondents, due to the application of the incorrect multiplier, excess amount has been paid to the petitioner under the NFFU Scheme which amount was liable to be recovered from him. By the order dated 05.02.2020, the Commandant (Admin), FTR, HQrs, SSB, Guwahati i.e. the respondent No.7 herein, had clarified that excess payment, so made due to erroneous fixation of pay shall be recovered from the officer viz., the writ petitioner, without further notice. The Drawing and Disbursing Officer of FTR, HQR, SSB, Guwahati had thereafter, issued the order dated 19.02.2020 asking the petitioner to refund the excess amount of Rs.2,93,698/- through cheque/DD as early as possible.

8. On 15.05.2020, the Inspector General, SSB, Frontier Headquarters, Guwahati had addressed a communication to the writ petitioner informing him that the request for waiver/non-recovery of the excess payment made by his application dated 24.03.2020 cannot be considered as he did not fall in Class-III and Class-IV service (or Group C and D service). In the said communication, a reference was also made to the undertaking obtained from the officer while exercising the option for pay fixation permitting recovery of any excess payment. Since the petitioner had refused to refund such amount, the communication dated 04.08.2020 for recovery of the amount, as noted above, was issued by the authorities which order is also under challenge in the present proceeding.

9. By filing this writ petition the petitioner has, therefore, *inter-alia* prayed for setting aside the orders dated 19.02.2018 and 21.05.2018 by means of which the period of suspension of the petitioner was extended on two occasions and for setting

aside the orders dated 05.02.2020, 19.02.2020, 15.05.2020 as well as 04.08.2020 as well as for issuance of a direction for extending all consequential benefits to the petitioner.

10. From the prayer portion in the writ petition, I find that the petitioner has also prayed for a writ of mandamus directing the respondents to refund the amount of Rs.2,93,698/- recovered from him along with interest accrued @ 18% per annum. However, during the course of argument, Mr. Das has clarified that no such recovery was actually made from the petitioner and therefore, he was not pressing the prayer for refund of Rs.2,93,698/- along with interest accrued @ 18% per annum.

11. The respondent Nos.1, 2, 3, 4, 5, 6 and 7 have filed joint affidavit contesting the case of the petitioner. Responding to the above, the writ petitioner has filed his rejoinder affidavit.

12. Mr. Das, learned counsel for the petitioner has argued that although, neither any departmental proceeding nor any charge-sheet has been submitted against the writ petitioner, his pension has been illegally withheld. Referring to the provisions of Rule 69 of the Central Civil Services (Pension) Rules, 1972 Mr. Das has further argued that the writ petitioner cannot be compelled to draw provisional pension since no departmental or judicial proceeding is pending against him. As such, submits Mr. Das, the present is a fit case for issuance of a writ of mandamus directing the respondents to settle the pension of the petitioner without any further delay.

13. In so far as the attempt on the part of the respondents to recover the excess amount due to excess drawal by the petitioner is concerned, Mr. Das has invited the

attention of this Court to the recovery already made from his client of an amount of Rs.10,26,362/- being the pay and allowances due and payable to the petitioner for the period of his suspension and submits that his client is entitled to an order regularizing the period of suspension under F.R. 54-B(3). According to Mr. Das, as and when such order regularizing the period of suspension is issued, the petitioner would be entitled to refund of the amount of Rs.10,26,362/-. As such, the question of making any further recovery from the petitioner at this stage does not arise.

14. In the above context Mr. Das has further argued that after the decisions of the Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 SCC 334** as well as in the case of **Jogeswar Sahoo and others Vs. District Judge, Cuttack and others** [2025 SCC OnLine SC 724] law is well settled that no recovery can be made from a retired employee in case of excess drawal/payment unless a case of misrepresentation or fraud is made out. Mr. Das, therefore, submits that in view of the aforesaid decisions of the Supreme Court, it is now well-settled that even if an undertaking is given by the employee permitting such recovery, the same will not be of any relevance in case of a retired employee. Under such circumstances, submits Mr. Das, the impugned order dated 04.08.2020 is illegal and hence, liable to be quashed by this Court.

15. Responding to the above submissions of the petitioner's counsel, Ms. B. Sarma, learned Central Government Counsel has argued that after completion of the COI and Additional COI, the matter had been referred to the Ministry of Home Affairs and thereafter, to the Central Bureau of Investigation (CBI) for appropriate action. The

matter is still pending with the CBI. It is on such that the respondents could not finalise the pension of the petitioner due to the pendency of the matter before the CBI.

16. In so far as the resistance offered by the writ petitioner opposing the recovery of the excess drawal is concerned, Ms. Sarma has contended that such recovery is permissible under the Office Memorandum dated 02.03.2016 of the DoPT. Moreover, since there is an undertaking issued by the petitioner agreeing to refund any excess payment made to him, the plea of estoppel raised by the petitioner's counsel would not be of any assistance to him in the facts of the present case. Contending that until such time the CBI takes a final decision in the matter, the departmental authorities would not be in a position to finalise the pension of the petitioner, she submits that since the petitioner is receiving provisional pension, hence, there is no justifiable ground for him to agitate the issue before this Court.

17. I have considered the submissions made at the Bar and have also gone through the materials available on record.

18. At the very outset, it deserves to be mentioned herein that although the departmental authorities had initiated a COI and thereafter an Additional COI against the writ petitioner way back in the year 2017-2018, yet, the said process has admittedly and evidently not been brought to its logical conclusion till today. There is also no plausible explanation for the delay on the part of the respondents for not doing so. A careful scrutiny of the materials available on record *prima-facie* goes to show that there is no specific allegation brought against the petitioner regarding any financial irregularity committed by him or any other misconduct having the

ingredients of a cognizable offence. Notwithstanding the same, the pension of the petitioner has been withheld allegedly on the ground of pendency of the matter before the CBI. On a pointed query made by this Court as to whether, there is any allegation of financial irregularities against the petitioner and if so, whether any case has been registered against him by the CBI, the learned counsel for the respondents could not provide any satisfactory answer.

19. In the above context, it would further be pertinent to note herein that considering the stand taken by the department furnishing the reason for non-finalisation of the pension of the petitioner, this Court had passed order dated 01.04.2025 directing the learned Central Government Counsel to obtain up-to-date instruction as to whether, the representations submitted by the petitioner for release of his pension has been acted upon by the authorities and also as to whether, any decision has been taken by the authorities pursuant to the Court of Inquiry and Additional Court of Inquiry by fixing the matter on 22.04.2025. The matter was again adjourned on 22.04.2025 so as to enable the learned CGC to obtain instruction by fixing it on 20.05.2025. However, when the case was called up today, Ms. Sarma has once again submitted that despite the communications issued by her to the concerned authorities seeking instruction as per the Court order, no response has been received till date. Ms. Sarma has also not been able to draw the attention of this Court to any provision in the CCS (Pension) Rules of 1972 permitting the respondents to withhold the pension of the petitioner merely because some enquiry is pending against him before some agency.

20. There is no dispute about the fact that the right of the petitioner to receive pension is governed by the provisions of Central Civil Services (Pension) Rules, 1972 [herein after referred to as the Rules of 1972]. Under Rule 9 of the Rules of 1972 the President has the right to withhold or withdraw pension or gratuity or both either in full or in part, whether permanently or for a specified period and also for ordering recovery from pension or gratuity of the whole or in part of any pecuniary loss caused to the Government if in a departmental or judicial proceeding the petitioner is found guilty of grave misconduct or negligence during the period of his service. In the case of **Union of India and others Vs. B. Dev** reported in **(1998) 7 SCC 691** the Supreme Court has held that the power of the President of withholding or withdrawing pension under Rule 9 of the Rules of 1972 would not be confined merely to a case where any pecuniary loss is caused to the Government but such power can be invoked even in cases of grave misconduct. However, even in order to do so, the principles of natural justice would have to be complied with and the Government servant will have to be provided with an opportunity of being heard in the matter.

21. In the present case, as has been noted herein above, not to speak of any departmental or judicial proceeding pertaining to financial loss to the Government, there is no proceeding, either departmental or judicial, pending against the petitioner pertaining to any misconduct on his part. That apart, no show-cause notice had been served upon the petitioner for withholding his pension. There is also no allegation brought against the writ petitioner of any grave misconduct. Admittedly, no order under Rule 9 of the Rules of 1972 has also been issued by the competent authority withholding the pension of the petitioner. Under such circumstances, this

Court is of the considered opinion that there is no legally justifiable ground for the respondent authorities to withhold the regular pension and other retirement benefits of the writ petitioner.

22. Rule 69 of the Rules of 1972 clearly provides that provisional pension would be payable only in case where a departmental or judicial proceeding is pending and the Government servant is placed under suspension or when a charge-sheet has been submitted. Rule 69 of the Rules of 1972 is reproduced herein below for ready reference :-

“69. Provisional pension where departmental or judicial proceedings may be pending.--- (1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon :

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be

paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

23. Having regard to the facts and circumstances of the case and the mandate of Rule 69 of the Rules of 1972, this Court is left with no manner of doubt that mere pendency of an Inquiry before the CBI could not have been a valid ground for the authorities to withhold the pension of the petitioner, that too, for a period more than four years after his retirement. Moreover, the materials brought on record by the respondents also do not, even remotely, indicate the presence of ingredients of a cognizable offence whereby, a premier investigating agency such as the CBI could have a genuine role to play. Under such circumstances, this Court is of the unhesitant opinion that the petitioner has made out a strong case for interference by this Court.

24. In so far as the attempt to recover the excess dues from the petitioner is concerned, it is not in dispute that the impugned order dated 04.08.2020 seeking to recover a sum of Rs.2,93,698/- had been issued after the date of retirement of the petitioner. Not only that, even the original order dated 05.02.2020 wherein, it was indicated that the excess amount shall be liable to be recovered, was also issued after the date of superannuation of the petitioner. Therefore, it is a clear case where an attempt has been made by the authorities to recover the sum of Rs.2,93,698/- from a retired employee which is impermissible under the law. The aforesaid issue has been conclusively dealt with by the Hon'ble Supreme Court of India in the case of **Rafiq**

Masih (*supra*) wherein the following observations were made in paragraph 16, which are reproduced herein below:-

“16. This Court in *Syed Abdul Qadir v. State of Bihar* [(2009)3 SCC 475] held as follows:

"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." (emphasis is ours)

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in *Syed Abdul Qadir's* case (*supra*), that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping

the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.”

25. Following the decision of the Supreme Court rendered in the case of **Rafiq Masih** (*supra*), the Government of India in the Ministry of Personnel, Public Grievance & Pension, Department of Personnel & Training had issued Office Memorandum dated 02.03.2016. The criteria laid down in para 4 of the Office Memorandum dated 02.03.2016 are relevant for this case and therefore, are reproduced herein below for ready reference :-

“4. The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

- (i) Recovery from employees belonging to Class-II and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been*

required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”*

26. From the above, it is apparent that the case of the writ petitioner would be covered under paragraph 4(ii) of the DoPT circular dated 02.03.2016. As such, no recovery with regard to excess drawal from the writ petitioner would be permissible from the writ petitioner after his retirement unless it is shown to be a case of fraud or misrepresentation by the employee. The aforesaid proposition of law has been re-stated again in the recent decision of the Supreme Court in the case of **Jogeswar Sahoo and others** (*supra*).

27. Coming to the next question as to whether an undertaking given by the employee can be the basis for the authorities to make recovery of excess drawal even from a retired employee, the said aspect of the matter also appears to have been resolved by the decision rendered in the case of **Jogeswar Sahoo and others** (*supra*) wherein the above question was also involved. The law has been finally settled that no recovery of excess payment/drawal from a retired employee would be permissible save and except in those cases where misrepresentation or fraud on the part of the employee is detected.

28. From a careful analysis of the decisions of the Supreme Court as referred to above as well as the Office Memorandum dated 02.03.2016, this Court is convinced

that no recovery of excess drawal can be made from the writ petitioner in a process initiated after his retirement, more so, when there is no allegation of misrepresentation or fraud against him.

29. In the above context it would be pertinent to note herein that as per the materials available on record, it appears that after the suspension order of the petitioner was revoked on 30.08.2018 and he was reinstated in service, the writ petitioner had made oral requests before the authorities to pay the regular salary and allowances pertaining to the period of suspension. It further appears that, acting on the basis of such requests made by the petitioner, the Zonal Paying Office had examined the bills submitted for that purpose and also the revocation of suspension and after due scrutiny of the bills, had cleared the same permitting the release of arrear pay and allowances applicable to the petitioner for the period of his suspension. Consequently, a sum of Rs.10,26,363/- was deposited in the Bank account of the petitioner. Immediately thereafter, the Inspector General (Pers), SSB, New Delhi had issued orders dated 09.08.2019 and 05.09.2019 providing for recovery of the sum of Rs.10,26,363/- from the salary of the petitioner with effect from the month of September, 2019 till January, 2020 @ Rs.1,18,608/- per month and the balance amount of Rs.4,33,322/- to be recovered from the DCRG of the petitioner allegedly on the ground that such amount had been illegally paid to the writ petitioner.

30. On 17.10.2019, a show-cause notice was served upon the petitioner whereby, he was informed that a COI was ordered against him vide order dated 14.05.2019 on the following terms of reference :-

- “i) To find out the circumstances under which pay and allowances for the suspension period of Sh. Sarwan Kumar, IG were claimed without specific orders of the Competent Authority with respect to regularization of the suspension period.*
- ii) To find the responsibility of erring officers/officials connected in processing the case for payment without any lawful orders of the Competent Authority.”*

Accordingly, the petitioner was asked to show cause as to why, disciplinary action should not be initiated against him for the above acts of omission and commission.

31. On 04.12.2019, the petitioner had submitted his show-cause reply denying the allegation. It would be noteworthy that as per the materials available on record, it appears that no further action has been taken by the authorities pursuant to the show-cause notice dated 17.10.2019.

32. From the above, what can be seen is that merely for requesting release of arrear salary and allowances for the period of suspension, which request was also duly verified and thereafter acted upon by the concerned authorities by depositing an amount of Rs.10,26,363/- in the bank account of the petitioner, not only have the respondents recovered the said amount from the salary of the petitioner but had also served a notice asking him to show cause as to why, disciplinary proceeding should not be initiated against him for misconduct. Making a request for depositing arrear pay and allowances for the period of suspension, even if not maintainable in law, cannot, by any stretch of reasonable reckoning, be treated as an act of omission or commission on the part of the petitioner constituting a misconduct. It is not the case of the respondents that the amount of Rs.10,26,363/- was procured by the petitioner

by illegal means and/or by making misrepresentation before the authorities. Since there is no order passed by the authorities within the meaning of F.R. 54-B(3) holding that the period of suspension of the petitioner was justified, this Court is of the opinion that the recovery of the amount of Rs.10,26,363/- from the petitioner and also the show-cause notice dated 17.10.2019 served upon him was not only wholly arbitrary and illegal but was also a clear attempt on the part of the authorities to cause undue harassment to the petitioner.

33. Mr. Das has argued that as per F.R. 54-b(3), it was incumbent upon the authorities to pass an order pursuant to the revocation of suspension and the reinstatement of the petitioner laying down as to whether, the suspension was justified or not. However, no such order has been passed till today. Considering the fact that no departmental proceeding or judicial proceeding had been initiated against the petitioner till date, the order of suspension, according to Mr. Das, ought to be held to be unjustified and therefore, a declaration to that effect ought to be made by this Court.

34. While dealing with the issue of duty of the authorities to pass appropriate order under F.R. 54, the Supreme Court of India in the case of **M. Gopalkrishna Naidu Vs. The State of M.P.** reported in **1968 0 AIR(SC) 240** has observed as follows :-

“5. The first question which requires consideration is whether there was a duty on the competent authority to afford an opportunity to the appellant to show cause before that authority formed the opinion as to whether he was fully exonerated and whether his suspension was wholly unjustified. Under F.R. 54 where a Government servant is reinstated, the authority has to consider and

make a specific order (i) regarding pay and allowances payable to him for the period of his absence from duty and (ii) whether such period of absence should be treated as one spent on duty. The consideration of these questions depends on whether on the facts and circumstances of the case the Government servant had been fully exonerated and in case of pension whether it was wholly unjustified. If the authority forms such an opinion the Government servant is entitled to full pay and allowances which he would have been entitled to had the order of dismissal, removal or suspension, as the case may be, not been passed. Where the authority cannot form such an opinion the Government servant may be given such proportion of pay and allowances as the authority may prescribe. In the former case the period of absence from duty has to be treated as period spent on duty for all purposes and in the latter case such period is not to be treated as period spent on duty. But the authority has the power in suitable cases to direct that such period of absence shall be treated as period spent on duty in which case the government servant would be entitled to full pay and allowances.”

35. It is no doubt correct that the consequences of an order under F.R. 54-B or the failure on the part of the authorities to issue such an order upon reinstatement of a Government servant on revocation of suspension would depend on the facts and circumstances of each case and no straight jacket formula can be laid down in respect thereof to be applied to the facts of each case. However, in the present case, having regard to the nature of allegation brought against the petitioner, the failure on the part of the authorities to bring the Court of Inquiry and Additional Court of Inquiry to its logical conclusion even after the lapse of several years and also the absence of any departmental or judicial proceeding against the petitioner would unequivocally go to show that the very exercise of placing the petitioner under suspension during the period from 21.11.2017 till his reinstatement vide order dated

30.08.2018 was wholly unjustified inasmuch as no guilt or misconduct on the part of the petitioner has either been established till today nor is there any valid attempt on the part of the authorities to do so. Under such circumstances, the only conclusion that can be drawn in the facts and circumstances of the present case is that there was no legal justification for placing the petitioner under suspension.

36. For the reasons stated herein above, this writ petition succeeds and is hereby allowed.

The writ petition is disposed of with a direction upon the respondents to pass appropriate order under Rule 54-B(3) of the F.R. pertaining to regularization of the period of suspension of the petitioner with effect from 21.11.2017 till his reinstatement, in the light of the observations made herein above, within 30 days from receipt of a certified copy of this order. Thereafter, the respondents shall pass final order pertaining to the claim of regular pension and other retirement dues, if any, payable to the petitioner under the rules, within a further period of 90 days (ninety days).

In so far as the attempted recovery of excess amount is concerned, the impugned orders dated 05.02.2020, 19.02.2020, 15.05.2020 and 04.08.2020 are hereby set aside.

It is made clear that if the respondents fail to comply with the order of this Court within the period mentioned above, the arrear amounts due and payable to the petitioner shall attract interest @ 12% per annum with effect from the date on which the same had become due till realization.

The writ petition stands disposed of accordingly.

Parties to bear their own costs.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant