


**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 219/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt. Nandbala Joshi W/o Shri Hargovind Joshi, R/o Village And Post Kanba Tehsil Bichhiwada, District Dungarpur (Raj.).

-----Respondent

Connected With

S.B. Civil Writ Petition No. 19240/2022

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt Mani Rot W/o Shri Bhagwan Ji Rot, R/o H. No. E/18, Ashok Nagar, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 19359/2022

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Miss Asha Shah D/o Late Shri Hukamlaji Shah, R/o Street No 2 Gokul Dham, New Colon, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 19495/2022

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt Urmila Chaubisa W/o Shri Chaitenya Kumar Chaubisa,
House No. 8 Ravindra Nath Tagore Colony, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 19526/2022

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The Distirct Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt Lata Dixit W/o Shri Mahesh Vyas, R/o H. No. 5,
Bhuvneshwari Colony, Behind S.t. Depot, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 19666/2022

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)
2. The District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.)

-----Petitioners

Versus

Smt Meena Panchal W/o Shri Phool Shankar Panchal, R/o H. No. 135, Subhash Nagar Garden Ke Pass, Naye Hospital Ke Piche, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 19695/2022

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)
2. The District Education Officer, (Headquarter) Secondary Education Department Of Education, Dungarpur (Raj.)

-----Petitioners

Versus

Smt Nirmala Trivedi W/o Shri Kanhaiyalal Trivedi, R/o 3/117
Housing Board Colony Near Raj Tent, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 19696/2022

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.)



-----Petitioners

Versus

Smt Bhanumati Sharma D/o Shri Jayanti Lal Sharma, R/o Village And Post Malpur, District Gujarat. At Present Village And Post Santhuna, Tehsil Simalwara, District Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 19697/2022

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary Education Department Of Education, Dungarpur (Raj.)

-----Petitioners

Versus

Kaushlya Bhadari W/o Shri Lalit Bhandari, R/o Plot No 279 Indra Colony Sector 14 Hiran Magri L Block, Udaipur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 19698/2022

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt Bhanuprabha Pandaya W/o Shri Vinod Kumar Pandaya, R/o Village And Post Kanba, Tehsil Bichhiwada, District Dungarpur.

-----Respondent

S.B. Civil Writ Petition No. 19714/2022

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)
2. The District Education Officer, (Headquarter) Secondary Education Department Of Education, Dungarpur (Raj.)

-----Petitioners

Versus

Smt Leela Shah W/o Shri Chandulal Shah, R/o 3/86 Shivaji Nagar Old Housing Board, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 19716/2022

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)

2. The District Education Officer, (Headquarter) Secondary Education Department Of Education, Dungarpur (Raj.)

-----Petitioners

Versus

Smt Madhubala Pandaya D/o Kamlashankar Joshi, R/o 3 Bhramsthali Colony, District Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 225/2023

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt Nalini Trivedi W/o Shri Harish Upadhyaya, C/o Hansa Traders, Tehsil Road, Kherwada, District Udaipur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 226/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt Shakuntla Joshi W/o Shri Rajendra Prasad Joshi, R/o Village And Post Oda Bada, Tehsil Bichhiwara, District Dungarpur.

-----Respondent

S.B. Civil Writ Petition No. 313/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt. Pushpa Damor W/o Shri Laxman Ji Damor, R/o J-322, Sector-14, Hiran Magri, Udaipur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 323/2023

1. State Of Rajasthan, Through The Director, Department Of

Secondary Education, Bikaner (Raj.).

2. The District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt Laxmi Purohit W/o Shri Devkinandan Purohit, R/o 43, Pratap Nagar Colony, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 338/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt. Nirmala Pandaya W/o Shri Tarunesh Pandaya, R/o Village And Post Kanba Tehsil Bichhiwada, District Dungarpur.

-----Respondent

S.B. Civil Writ Petition No. 365/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner, (Raj.).
2. The District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt Memuna Malik W/o Shri Mohd Saiyed Malik, R/o Ghati Mohalla, Fauz Ka Badla, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 387/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, Headquarter Secondary Education Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Mrs Nalini Choubisa W/o Shri Yogeshchandra Choubisa, Gandhi Ashram Sabela Bye Pass Road, Rotary Club Ke Piche, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 450/2023

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.).
2. District Education Officer, Headquarter Secondary Education Department Of Education
3. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Urmila Sharma D/o Late Shri Chaturbhuj Sharma, Plot No 2/56
Shivaji Nagar, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 567/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, (Headquarter) Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Parvin Jaha Pathan D/o Shri Aalaudin Khan Pathan, R/o Plot No.
12/a, Patrakar Colony, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 569/2023

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.)

-----Petitioners

Versus

Brij Bala Pandya W/o Late Shri Rajendra Prasad Pandya, R/o Plot
No. 117, Subhash Nagar, Behind New Hospital, Dungarpur
(Raj.).

-----Respondent

S.B. Civil Writ Petition No. 631/2023

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.).
2. District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Smt. Usha Pandaya W/o Late Shri Prakash Pandaya, R/o Village
And Post Oda Bada, Tehsil Bichhiwada, District Dungarpur.

-----Respondent

S.B. Civil Writ Petition No. 678/2023

1. State Of Rajasthan, Through The Director, Department Of
Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary
Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt. Raksha Shah W/o Shri Hariprasad Gupta, R/o H. No. 15,
Housing Board, Shivaji Nagar, Behind Raj Tent House, Dungarpur
(Raj.).

-----Respondent

S.B. Civil Writ Petition No. 794/2023

1. State Of Rajasthan, Through The Director Department Of
Secondary Education, Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary
Education Department Of Education Dungarpur (Raj.)

-----Petitioners

Versus

Smt Laxmi Vakhariya W/o Shri Bharat Lal Vakhariya, Vakhariya
Chowk, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 797/2023

1. State Of Rajasthan, Through The Director Department Of
Secondary Education Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary
Education Department Of Education, Dungarpur (Raj.)

-----Petitioners

Versus

Smt Hemlata Chaubisa W/o Shri Narendra Kumar Chaubisa, A/6
Bankers Street New Colony, Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 800/2023

1. State Of Rajasthan, Through The Director Department Of
Secondary Education, Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary

Education Department Of Education, Dungarpur (Raj.)

-----Petitioners

Versus

Smt Daksha Joshi W/o Shri Karunashankar Joshi, Village And Post Kanba, District Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 1024/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. District Education Officer, (Headquarter), Secondary Education Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smtjaiprabha Pandaya W/o Late Shri Manoharlal Pandaya, Village And Post Kanda, Tehsil Bichhiwada, District Dungarpur.

-----Respondent

S.B. Civil Writ Petition No. 2031/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt Ishwari Devi W/o Shri Navin Chandra Pandya, R/o Village And Post Naval Shyam, Tehsil Bichhiwada, District Dungarpur (Raj.).

-----Respondent

S.B. Civil Writ Petition No. 3475/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Petitioners

Versus

Smt. Ramila Bhatt W/o Shri Ram Prasun Bhatt, R/o 346, Pratap Nagar, Dungarpur (Raj.).

-----Respondent

For Petitioner(s) : Mr. Hemant Choudhary, G.C.
For Respondent(s) : None present

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

14/03/2023

Lawyers are abstaining from work and are not appearing before the Court, thus, nobody has appeared on behalf of the respondents.

Since all these writ petitions arise out of the common impugned order dated 03.09.2021 and are having common question of law and similar facts, therefore, they are being heard and decided by this common order.

For proper adjudication of the case, the facts are being extracted from S.B. Civil Writ Petition No. 219/2023.

Brief facts of the case are that being eligible and having requisite qualification prescribed under Rule 11 and the Schedule attached to the Rajasthan Panchayat Samitis and Zila Parishad Rules, 1959, respondent- Smt. Nandbala Joshi was appointed on the post of Teacher Grade-III in the Education Department. Thereafter, the District Education Officer, Elementary Education, Dungarpur passed orders granting her I, II and III Selection Scales on completion of 9, 18 & 27 years of service respectively and also extended the benefit of fixation of pay under the provision of Rajasthan Civil Services (Revised Pay) Rules, 2017 as per recommendation of Seventh Pay Commission. Respondent- Smt. Nandbala Joshi was continuing to receive the benefits extended by the petitioners, however, all of a sudden, vide order

dated 09.07.2018, the respondent No.2- District Education Officer, Secondary Education instructed all the Heads of the offices to effect the recovery of the amount from the salary of the respondent which was paid to her on completion of 27 years of service and also to recover the monetary benefits extended to her by revision of pay under the Rules of 2017. Being aggrieved by the order dated 09.07.2018 passed by District Education Officer, Secondary Education, respondent- Smt. Nandbala Joshi preferred an appeal before the Rajasthan Civil Services Appellate Tribunal, Circuit Bench, Jodhpur (hereinafter referred to as 'the Tribunal'). The Tribunal vide its order dated 03.09.2021, while relying on the various decisions of the Hon'ble Supreme Court and the High Court, allowed the appeal preferred by the respondent and set aside the order dated 09.07.2018 issued by the petitioner-State. Aggrieved by the order dated 03.09.2021, the petitioner- State has preferred these writ petitions.

Since the order dated 09.07.2018 was not on record, the same has been supplied by Shri Hemant Choudhary, learned Government counsel during the course of hearing. The same is taken on record.

Mr. Hemant Choudhary, learned counsel for the petitioners vehemently submits that the Tribunal has committed an error while allowing the appeals of the respondents vide order dated 03.09.2021. He further submits that the Tribunal has not considered the entire matter in the correct perspective. He also submits that the recovery has been effected in pursuance of the orders dated 29.06.2009 and 20.08.2010 passed by the Finance Department of the State Government. Learned counsel also

submits that since the benefit of III Selection Scale was wrongly extended to the respondents, therefore, the payments made erroneously were sought to be recovered. He further submits that the State is well within its right to recover the payments made to its employee if the same is erroneously made, as an employee is not entitled to retain the payment which was otherwise not due to him. He submits that the order dated 09.07.2018 for recovery of the payment made to the respondents is just, proper and correct. Learned Government counsel, therefore, prays that the writ petitions may kindly be allowed and the order impugned dated 03.09.2021 passed by the learned Tribunal may be quashed and set aside.

I have considered the submissions made at the Bar and have gone through the pleadings as well as the order impugned dated 03.09.2021.

The grant of selection scales to the respondents on completion of 9, 18 & 27 years of their service has not been disputed. It is also an admitted position that the selection scales were granted to the respondents by the petitioners considering the prevalent rule position at that time. It is not the case of the petitioners that there was any misrepresentation or the selection scales have been granted to them on incorrect facts having been supplied by the respondents. In nutshell, the respondents were not at all responsible in supplying any kind of information, much less wrong information for the grant of selection scales on completion of 9, 18 & 27 years of service. Therefore, there is no hesitation in holding that the selection scales granted by the

petitioner-State is without any fault and misrepresentation on the part of the respondents.

In the similar situation, Hon'ble the Supreme Court has consistently held that excessive payments made to the employees without their fault or misrepresentation cannot be recovered after a lapse of long period of time.

Recently, the Apex Court in the case of **Thomas Daniel Vs. State of Kerala & Ors. (Civil Appeal No.7115 of 2010 decided on 02.05.2022)** held as under:-

"11. In Col. B.J. Akkara (Retd.) v. Government of India and Ors. (2006) 11 SCC 709, this Court considered an identical question as under:

27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana 1995 Supp (1) SCC 18 : Shyam Babu Verma v. Union of India (1994) 2 SCC 521 : Union of India v. M. Bhaskar (1996) 4 SCC 416 : and Gangaram v. Regional Jt. Director (1997) 6 SCC 139 :

- (a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.
- (b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/ allowance or on the basis of a particular interpretation of rule/ order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to

recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The Petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the Respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.

12. In *Syed Abdul Qadir and Ors. v. State of Bihar and Ors.* : (2009) 3 SCC 475 excess payment was sought to be recovered which was made to the Appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The Appellants therein contended that even if it were to be held that the Appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the Appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/ understanding of a Rule or Order. It was held thus:

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.

13. In *State of Punjab and Ors. v. Rafiq Masih (White Washer) and Ors.* : (2015) 4 SCC 334, wherein this Court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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18. 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. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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.

14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the Appellant, the excess amounts have been paid. The Appellant has retired on 31.03.1999. In fact, the case of the Respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.

16. In the result, the appeal succeeds and is accordingly allowed. The judgment and order of the Division Bench dated 02.03.2009 and also of the learned Single Judge of the High Court dated 05.01.2006 impugned herein, and the order dated 26.06.2000 passed by the Public Redressal Complaint Cell of the Chief Minister of Kerala and the recovery Notice dated 09.10.1997 are hereby set aside. There shall be no order as to costs."

A bare perusal of the order dated 09.07.2018 shows that the benefits granted on completion of 27 years of service to the respondents is unilaterally being recovered without giving any opportunity of hearing. The order dated 09.07.2018 has civil and evil consequence, therefore, an opportunity of hearing is must in compliance of the principles of natural justice. Since the same has not been granted in the present case, the order dated 09.07.2018 is not sustainable. The Tribunal has also taken note of persons

similarly situated to the respondents who were granted relief on the earlier occasions by the order of the Tribunal passed in Appeal Nos.897/2002 to 1043/2002 on 16.03.2012.

Mr. Hemant Choudhary, learned Government Counsel is not in a position to submit before this Court that the relief extended to the similar persons as noted by the Tribunal was challenged before the higher court or not. There is no reason for this Court to distinguish the case of the present respondents from the case of those in whose favour the Tribunal has ruled out vide order dated 16.03.2012.

In the considered opinion of this Court, the Tribunal has taken note of all the points canvassed before it and has rightly adjudicated the issue in favour of the respondents.

Resultantly and in view of the discussions made above, there is no force in these writ petitions and the same are, hereby, dismissed.

(VINIT KUMAR MATHUR),J

124-153-/Anil Arora/Vivek/-