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Date of Order: 22/03/2017

Abdul Rehman Rather Vs. State of JK & Ors.

**Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge.**

For Petitioner (s): Mr. Kaiser, Adv. vice Mr. M.M. Dar, Adv.  
For Respondent (s): Mr. A. M. Mir, Dy. AG.  
Mrs. Masooda Jan, Adv.

ii) Whether to be reported in **Media/Press**: Yes/No

2. What has happened is that while converting Bikrimi date (3-2-2011) into Christian Era, mistake has crept in i.e. date of birth in Christian Era should have been reflected as 15-05-1954 instead 15-05-1955. Based on said mistake, petitioner has been retired on 31<sup>st</sup> May 2013

when he had to retire on 31<sup>st</sup> May 2012.

3. After retiring, his pension papers have been prepared and sent to the Office of the Accountant General (respondent No. 4) where an objection has been raised regarding the position as referred to above and same has been conveyed to the Block Development Officer, Narbal vide Communication No. PVC-4/S-2/13-14/492 dated 03-09-2013. The communication was further to the effect that the government may look into the matter, either the over stayed period be got regularized or in alternative excess pay and allowance paid for the over stayed period be worked out and intimated to the Office of Accountant General with due and drawn statement for effecting recovery thereof. The communication has been challenged by medium of this writ petition.

4. The simple question for consideration is as to whether recovery can be ordered. In this connection, learned counsel for the petitioner would submit that no fault or indolence is attributable to the petitioner. The petitioner being a Class IV employee has worked all along with dedication. This mistake by the authorities concerned while converting the date of birth into the Christian Era by no means is a fault attributable to the petitioner. In addition submits that the petitioner has

worked up to 31<sup>st</sup> May 2013 which is not disputed.

5. In a situation, when no fault or any malafide or any mischief is attributable to the petitioner, the recovery cannot be ordered. Reliance is rightly placed on the judgment rendered by the Hon'ble Apex Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer) 2015 4SCC 334.***

The submission of the learned counsel for the petitioner carries weight to prevail. It shall be advantageous to quote para 18 of the judgment referred:

*"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 wherein 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.*

6. The case of the petitioner is covered by Clause ii.

Petitioner has retired in the year 2013, now to order recovery is impermissible in view of the law laid down by the Hon'ble Supreme Court as referred above. If any proceedings for recovery is pending, same shall be closed. Pension case of the petitioner shall be settled within four weeks. The respondents shall take all requisite steps at their respective levels so as to ensure that the pension case of the petitioner is settled within the time fixed.

Disposed of as above.

**(Mohammad Yaqoob Mir)**  
**Judge**

**SRINAGAR**  
22<sup>nd</sup> March 2017  
***"Aasif"***