

Anzar a. vs Union of India

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Court : Kerala

Decided On : Jul-30-2021

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/31361/2015

Appellant : Anzar a.

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL TH
FRIDAY, THE 30 DAY OF JULY 2021 / 8TH SRAVANA, 1943
PETITIONER/S:

1 ANZAR A. LIBRARIAN GRADE-IV, COLLEGE OF ENGINEERING,
PERUMON, PERINAD P.O., KOLLAM-691 601. 2 REJI TOM LAL
LIBRARIAN GRADE-IV, COLLEGE OF ENGINEERING, PERUMON,
PERINAD P.O., KOLLAM-691 601. 3 PRADEEP S.R. TRADESMAN,
(DEPARTMENT OF ELECTRONICS AND COMMUNICATIONS),
COLLEGE OF ENGINEERING, PERUMON, PERINAD P.O., KOLLAM-
691 601. 4 SUMAN P.S. TRADESMAN, (DEPARTMENT OF

ELECTRONICS AND COMMUNICATION), COLLEGE OF ENGINEERING AND MANAGEMENT, PUNNAPRA, AKSHARA NAGARI, VADACKAL P.O., ALAPPUZHA DISTRICT-688 003. BY ADV SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENT/S:

1 UNION OF INDIA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF HIGHER EDUCATION, MINISTRY OF HUMAN RESOURCES DEVELOPMENT DEPARTMENT, NEW DELHI-110 001. 2 THE DIRECTOR STATE PROJECT FACILITATION UNIT, KERALA (TEQUIP), DIRECTORATE OF TECHNICAL EDUCATION, FORT P.O., THIRUVANANTHAPURAM-695 023. 3 THE DIRECTOR CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION, CO- OPERATION BANK TOWER, VIKAS BHAVAN, THIRUVANANTHAPURAM- 695 033. 4 THE PRINCIPAL COLLEGE OF ENGINEERING, PERUMON, PERINAD P.O., KOLLAM- 691 601. 5 THE PRINCIPAL COLLEGE OF ENGINEERING AND MANAGEMENT, PUNNAPRA, AKSHARA NAGARI, VADACKAL P.O., ALAPPUZHA DISTRICT-688 003. BY ADVS. SRI.P.L.VENUKUMAR, CGC GOVERNMENT PLEADER SRI.M.SASINDRAN

OTHER PRESENT: SR GP SRI BIMAL K NATH , SRI P VIJAYAKUMAR ASGI THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioners, 4 (four) in number, in the present writ petition, assailed the orders Exts.P10, P12 and P14, whereby the amount has been recovered on the basis of audit objection

2. Petitioners while working under the 4 th respondent

ie., the Principal, College of Engineering, Kollam attended National Workshop on Moodle Course Management System organised by the Fr. Sales Library Sacred Heart College, Thevara during May, 2014. The object of the workshop was to familiarize participants with the concept of Moodle and to help the participants to develop necessary skills in installation,

server and client configuration.

The registration fee for

representation, which was acceded by 4th respondent and while granting permission it was stated that the expenditure would be met from the head of account 'FSD' of TEQIP II (Technical Education Quality Improvement Programme) fund in the current financial year, Ext.P5. The said program was sponsored by first respondent ie., Union of India. Vide Ext.P6 dated 9.5.2014 a sum of Rs.1,54,000/- was sanctioned by the 4th respondent as advance. In the meeting held on 13.5.2015 at TEQUIP office has recommended to allow the petitioners to attend the training programme.

3. Learned counsel appearing on behalf of the

petitioners submitted that the amount received by the petitioners was in excess and an amount of Rs.10,572/- was repaid. In July 2014, an audit objection was raised with regard to the sanctioning of advance to the petitioners and ultimately led to recovery which necessitated the petitioners to approach this Court. This Court vide order dated 15.10.2015 admitted the writ petition and stayed the recovery. There was no fault of the petitioners in attending the Workshop as there were

permitted to attend the course and the recovery is wholly unjustified and illegal in view of the dictum laid down by the Supreme Court in State of Punjab and Others v. Rafiq Masih (White Washer) [(2015) 4 SCC 334]. Petitioners are either Librarian or Tradesman, it is very difficult for them with meagre salary to make both ends meet. As per TEQI Program, the petitioners were entitled for Course fees, admissible TA and DA but no adherence was made.

4. On the other hand, counsel for the respondent

opposed the aforementioned submissions on the premise that the expenditure incurred for the Workshop was inadmissible and it is on that background recovery was being effected. The sanctioning authority was not aware of the expensive gadgets given to the participants during Workshop. There was no violation of the provisions of Section 7 of the Project Implementation Plan of Technical Education Quality Improvement Programme Phase II.

5. I have heard the learned counsel for the parties and appraised the paper book. The facts noticed above are not in

dispute. The proper procedure was followed, as on the representation decision was taken and advance was also released and excess amount were repaid. It is settled law that excess amount paid to the employee without any fault of the employee cannot be recovered de hore of the audit objection. The observation of mine is derived from Para 18 of the

judgment cited supra. The same reads as under:

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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III 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. I am of the view that the action of the respondents in seeking the recovery from the salary was wholly irrational and illegal. Exts. Exts.P10, P12 and P14 are quashed. Writ petition is allowed. The respondents are directed to disburse the deducted amount to the petitioners as reflected in Exts.P16, P17, P18 and P19, as early as possible within a period of one month from the date of receipt of a certified copy of the

judgment.

Sd/- sab AMIT RAWAL JUDGE APPENDIX OF WP(C) 31361/2015 PETITIONER
EXHIBITS

P1 : COPY OF THE BROCHURE. P2 : COPY OF THE REPRESENTATIONS DTD.7.5.2014 PREFERRED BY THE 1ST AND 2ND PETITIONERS. P3 : COPY OF THE REPRESENTATION DTD.7.5.2014 PREFERRED BY THE 3RD PETITIONER. P4 : COPY OF THE REPRESENTATION DTD.7.5.2014 PREFERRED BY THE 4TH PETITIONER. P5 : COPY OF THE ORDER ISSUED BY THE 4TH RESPONDENT DTD.9.5.2014. P6 : COPY OF THE ORDER DTD.9.5.2014 ISSUED BY THE 4TH RESPONDENT. P7 : COPY OF THE ACADEMIC MINUTES BOOK. P8 : COPY OF THE RELEVAT EXTRACT OF THE VIIITH MEETING OF THE BOARD OF GOVERNORS. P9 : COPY OF THE STOCK REGISTER. P10: COPY OF THE AUDIT NOTE DTD.24.7.2014. P11: COPY OF THE

COMMUNICATION ISSUED BY THE 4TH RESPONDENT DTD.24.7.2014. P12: COPY OF THE LETTER SENT BY THE 2ND RESPONDENT DTD.25.8.2014. P13: COPY OF THE REPLY SENT BY THE 4TH RESPONDENT DTD.3.9.2014. P14: COPY OF THE COMMUNICATION ISSUED BY THE 4TH RESPONDENT DTD.22.7.2015. P15: COPY OF THE RELEVANT EXTRACT OF THE PROJECT IMPLEMENTATION PLAN OF TECHNICAL EDUCATION QUALITY IMPROVEMENT PROGRAMME PHASE-II. P16: COPY OF THE SALARY STATEMENT OF THE 1ST PETITIONER. P17: COPY OF THE SALARY STATEMENT OF THE 2ND PETITIONER. P18: COPY OF THE SALARY STATEMENT OF THE 3RD PETITIONER. P19: COPY OF THE SALARY STATEMENT OF THE 4TH PETITIONER.

R3(A) : A TRUE COPY OF THE LETTER NO.140/SPFU/GOK/2013 DATED 8.10.2014

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