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## SUPREME COURT ON RECOVERY OF EXCESS PAYMENT

### A. Introduction

Supreme Court (“**SC**”) in *Thomas Daniel* case<sup>1</sup> held that any excess payments made on account of wrong calculations by the employer, by applying a wrong principle or based on a particular interpretation of a rule/order, which is subsequently found to be erroneous, is not recoverable.

### B. Facts

1. Thomas Daniel (“**Daniel**”) joined Craven High School, Kollam as a high school teacher/assistant in 1966. During his tenure as a teacher, Daniel availed leave without allowance in two instances between 1972 and 1974 for pursuing higher education. In 1989, Daniel was promoted as headmaster with adjusted pay scale.
2. In 1997, Daniel was served with a notice and an audit report raising objections on his period of leave for higher education while determining his total qualifying service as teacher and proposing recovery of increments granted to him.
3. Daniel retired from service in 1999 and was not paid pension or death-cum-retirement gratuity benefits (“**Benefits**”). He filed various representations, but no response was received.
4. In 2005, he challenged the proposal to initiate recovery proceedings against him before the Public Redressal Complaint Cell, Chief Minister of Kerala (“**Government**”). The Government rejected the complaint on grounds that the post-graduation degree was of no use under the Kerala Service Rules, 1958 and hence, leave without allowance could not be considered for service benefits.
5. Dissatisfied by the order, Daniel filed a writ petition before the Kerala High Court (“**HC**”). The HC upheld the Government’s reasoning and held that mistakes committed by the department while granting service benefits can be rectified subsequently by way of proposed recovery from Daniel’s benefits.
6. Aggrieved, Daniel approached before the SC that excess payment made by the department was not on the basis of any misrepresentation or fraud committed by him.

### C. Judgment and Reasoning

SC:

1. Observed that a multitude of precedents have held that any payment of excess amounts which are not done on account of fraud or misrepresentation; or if payments were made by wrongful

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<sup>1</sup> *Thomas Daniel v. State of Kerala and Ors.* (02.05.2022 – SC): MANU/SC/0569/2022.  
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application of principle while calculating pay; or misinterpretation of an order/rule which is erroneous are not recoverable once paid.

2. Relied on the *Sabib Ram* case<sup>2</sup> where it was observed that a school principal had erred in giving a librarian a higher pay due to wrong construction and not on account of any misrepresentation by the teacher. In such circumstances, the principle of 'equal pay for equal work' does not apply and the amount wrongfully paid to the appellant cannot be recovered.
3. Relied on the cases of *Col B.J. Akkara (Retd.)* case<sup>3</sup> and *Syed Abdul Qadir* case<sup>4</sup> where the courts held that recovery cannot be granted on the ground of wrong interpretation of rules and circulars.
4. Opined that the ground for granting relief against recovery is a judicial discretion which is exercised to ensure that such recovery does not cause undue hardship to the employee and that a recovery of excess amounts can be made in cases where it is proved that the employee was aware/had knowledge of excess payments being made.
5. Held that an attempt to make a recovery after a period of ten years on the ground of mistake in interpreting a rule is not justified.

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<sup>2</sup> *Sabib Ram v. State of Haryana and Ors.* (19.09.1994 – SC): MANU/SC/0848/1995.

<sup>3</sup> *Col B.J. Akkara (Retd.) v. Government of India and Ors.* (10.10.2006 – SC): MANU/SC/4389/2006.

<sup>4</sup> *Syed Abdul Qadir and Ors. v. State of Bihar and Ors.* (16.12.2008 – SC): MANU/SC/8491/2008.