

Court No. - 39

Case :- WRIT - A No. - 20292 of 2023

Petitioner :- Union Of India And 3 Others

Respondent :- Ram Pyare Tiwari And Another

Counsel for Petitioner :- Anupam Kumar

Counsel for Respondent :- A.S.G.I.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Shri Anupam Kumar, learned counsel for the petitioners.
2. Present petition is directed against the order dated 13.01.2023 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application No. 330/00608 of 2019 (Ram Pyare Tiwari Vs. Union of India and 3 others). By the impugned order, the Tribunal has allowed the Original Application and quash the order dated 15/16.06.2016. Also, a direction has been issued to refund Rs. 3,55,655/- to the respondent, Ram Pyare Tiwari together with 6% simple interest.
3. Having heard learned counsel for the petitioners and having perused the record, we find no good ground to offer any interference in exercise of our extra ordinary jurisdiction under Article 226 of the Constitution of India. Undisputedly, the respondent was a Postal Assistant i.e. Class-III employee. He was granted the benefit of disputed Modified Assured Career Progression Scheme ("MACP" in short) in the year 2015. He retired from service on 31.03.2016. More than two months thereafter, the order dated 15/16.06.2016 was passed to recover that amount from the respondent. At that stage, the only ground that existed with the petitioners was non-entitlement of the respondent to the benefit of MACP as he had already received three upgradations under the pre-existing Assured Career Progression ("ACP" in short). No allegation of fraud or misrepresentation or like nature was made against the respondent.

4. In such facts, the case of the respondent is squarely covered under Clause (iii) of paragraph 18 of **State of Punjab and others v. Rafiq Masih (White Washer) and another, (2015) 4 SCC 334**.

5. Since the respondent had already retired from service before the recovery order came to be passed, there is no occasion to consider his case under Clause (iii) of paragraph 18 of **Rafiq Masih (supra)**. In **Union of India and 5 Ors. Vs. Rakesh Chandra Verma and Anr., Neutral Citation No.-2023:AHC:222294-DB**, we have observed as below :

*"6. Then referring to the decision in the case of **Rafiq Masih (supra)**, Shri Singh has referred to paragraph-18 of the report and submitted that the case of the private-respondent would fall under Clause (iii) thereof and therefore recovery was permissible. Also, for reason of the qualifying Clause, noted above, contained in the Office Order No. 20 of 2013, dated 03.09.2013 (quoted above), the case of the private-respondents would not fall under Clause (ii) of **Rafiq Masih (supra)**. For ready reference paragraph 18 of the said report reads as below :*

"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."

6. In view of the above, we find no error in the order of the Tribunal. Accordingly, the petition stands **dismissed**.

Order Date :- 7.12.2023

SA

(Shiv Shanker Prasad, J.) (S.D. Singh, J.)