

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.6.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Writ Petition No.1857 of 2015

G.Vasudevan .. Petitioner

Vs.

1. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai 600 104.
2. Union of India rep. by
The Chief General Manager, Telecom
Bharat Sanchar Nigam Limited
Tamil Nadu Telecom Circle
No.80, Anna Salai
Chennai 600 002.
3. The Controller of Communication Accounts
Department of Telecom
Tamil Nadu Circle
Chennai 600 002.
4. The Principal General Manager
Bharat Sanchar Nigam Limited
Coimbatore 641 018. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records relating to the order dated 18.7.2014 given in O.A.No.1235 of 2012 and order dated 19.8.2014 in R.A.No.31 of 2014 passed by the first respondent and to quash the same.

For Petitioner : Mr.S.Ramaswamyrajarajan

For Respondent-2 : Mr.R.Veludas, CGC

For Respondents 3 & 4: No appearance

O R D E R
(Made by V.Ramasubramanian, J.)

The petitioner, whose application seeking to set aside an order of recovery was dismissed by the Central Administrative Tribunal, has come up with the above writ petition.

2. Heard Mr.Ramasamyrajarajan, learned counsel for the petitioner and Mr.R.Veludas, learned Central Government Standing Counsel appearing for the second respondent.

3. The petitioner retired from service on 29.02.2004 as the Deputy General Manager of BSNL. After eight years of his retirement, the petitioner realised that an improper recovery of Rs.54,722/- had been made from his pensionary benefits. Therefore, he made a representation on 15.6.2012 which came to be rejected by an order dated 15.9.2012.

4. Challenging the said order, the petitioner filed O.A.No.1235 of 2012 on the file of the Central Administrative Tribunal. But, the Tribunal rejected the application by an order dated 18.7.2014, on the basis of the decision of the Supreme Court in Chandi Prasad Uniyal v. State of Uttarakhand [(2012) 8 SCC 417].

5. The petitioner filed a review application in R.A.No.31 of 2014. But, the same was also dismissed by an order dated 19.8.2014 forcing the petitioner to come up with the above writ petition.

6. The dismissal of the review application cannot be taken exception to, since the review did not satisfy the ingredients of Order XLVII, Rule 1, CPC. But, even in the main case, the petitioner cannot make out a ground for interference. The petitioner admittedly retired on 29.02.2004. The recovery was made allegedly in 2004. The earliest representation that the petitioner made was on 15.6.2012. This was after eight years of the cause of action. This cause of action was not even a continuing cause of action. Therefore, the decision taken by the Tribunal cannot be said to be illegal or arbitrary.

7. Though Mr.Ramasamyrajarajan, learned counsel for the petitioner submitted that the Tribunal did not dismiss the application on the ground of delay and laches and though the learned counsel relied upon the latest decision of the Supreme Court in State of Punjab v. Rafiq Masih (White Washer) etc. [2015 (2) All India Services Law Journal 151], we do not think that they would be of any help to the petitioner. The fact that the Tribunal did not dismiss the application on the ground of delay and laches is true. But, it does not mean that we should overlook the same.

8. In the decision of the Supreme Court in State of Punjab v. Rafiq Masih (White Washer) etc., the Supreme Court laid down the following propositions:

"1. Recovery from pay of employee may be made if it does not cause hardship to him or it would be iniquitous to recover.

2. Doctrine of equality is dynamic and is evolving concept.

3. Equity and good conscience should be basis of State action as per our Constitution.

4. Where payment has been made for a long payment to employee, it will be iniquitous to recover.

5. If mistake of making a wrongful payment is detached within five years, it will be recovered.

6. Where payment has continued for 5 years even if it is permissible to correct the mistake, it will be arbitrary and iniquitous to effect recovery.

7. Recovery from retired or about to retire employees will cause extremely harsh consequences."

9. But, this propositions could have been relied upon by the petitioner, had he come up within the time. If recovery was not permissible as per the said judgment, beyond a reasonable time, agitating the same cannot also be permitted beyond a reasonable time. Therefore, we find no reason to interfere with the order of the Tribunal. Hence, the writ petition is dismissed. No costs. Consequently, M.P.No.1 of 2014 is also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl

WEB COPY

To

1. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai 600 104.
 2. The Chief General Manager, Telecom
Bharat Sanchar Nigam Limited
Tamil Nadu Telecom Circle
No.80, Anna Salai
Chennai 600 002.
 3. The Controller of Communication Accounts
Department of Telecom
Tamil Nadu Circle
Chennai 600 002.
 4. The Principal General Manager
Bharat Sanchar Nigam Limited
Coimbatore 641 018.
- +1cc to M/s. R. Veludas, CGSC, SR.31227
- +1cc to M/s. S. Ramaswamy Rajarajan, Advocate, S.R.No.31111

CA(CO)
EU(10/07/2015)

W.P.No.1857 of 2015.

सत्यमेव जयते

WEB COPY