

HON'BLE SRI JUSTICE R. KANTHA RAO

+ WRIT PETITION No.16652 of 2015

%24.07.2015

S.Ganapathi Rao

...Petitioner

VERSUS

\$ Telangana State Road Transport Corporation, rep. by its

Managing Director, Bus Bhavan, B-Blcok, Musheerabad

Hyderabad & 2 others

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri V. Narasimha Goud

^Counsel for Respondents: Sri N. Vasudeva Reddy

? Cases referred

1. (2012) 8 SCC 417
2. 2015 LAB.I.C.1743

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Writ Petition No.16652 of 2015

Between:

S.Ganapathi Rao

.. Petitioner (s)

And

Telangana State Road Transport Corporation,
Rep. by its Managing Director, Hyderabad & 2 others

.. Respondent (s)

JUDGMENT PRONOUNCED ON : 24.07.2015

HON'BLE SRI JUSTICE : R. KANTHA RAO

1. Whether Reporters of local newspapers :
may be allowed to see the Judgments?

2. Whether the copies of judgment may be :
marked to Law Reporters/Journals?

3. Whether their Ladyship/Lordship wish to :
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition No.16652 of 2015

ORDER:

Heard Sri V. Narasimha Goud, learned counsel appearing for the petitioner

and Sri N. Vasudeva Reddy, learned standing counsel for respondents-Corporation.

2. The petitioner joined service in the respondents-Corporation as a Mechanic on 03.02.1979 on regular basis. He was promoted as Grade-I Mechanic in the year 1994. Subsequently, he was given the post of Trimmer on transfer from the mechanic post. He retired on 31.03.2014 on attaining the age of superannuation. According to the petitioner, his entire service benefits were not arranged and as on the date of his retirement, there were more than 300 earned leaves and other half pay leaves at his credit. Nextly, it is submitted that while arranging the gratuity, the 3rd respondent deducted Rs.18,000/- without any notice or assigning any reasons. By encashing the un-availed earned leaves, the petitioner was supposed to get more than Rs.3,52,000/- as he was drawing the basic pay Rs.18,560/- and D.A. of Rs.12,884/- and other allowances. When the petitioner insisted upon the respondents to assign reasons for paying lesser benefit, they did not furnish any reason. He made an application on 07.04.2015 under the Right to Information Act, requesting to furnish the details of payment of lesser monetary benefits. They furnished statement of pay fixation done right from 1994 to the date of his retirement on 01.06.2015. On verification, the petitioner came to know that they recovered Rs.1,39,010.20 duly reducing the pay from Rs.18,565/- to Rs.18,045/-. The said recovery was done without any notice or opportunity to the petitioner. It is further submitted that the respondents have no authority to recover any amount from the retiral benefits of the employee after his retirement, as there is no misrepresentation or fraud on the part of the petitioner, nor he had any role in fixation of pay or in calculating the monetary benefits. Hence, the petitioner was constrained to invoke the extraordinary jurisdiction of this court under Article 226 of the Constitution of India, having left with no other efficacious remedy. He prayed for issuance of writ of *Mandamus* declaring the action of the respondents in recovering a sum of Rs.18,000/- from the gratuity and also recovering a sum of Rs.1,39,010/- from the retirement benefits of the petitioner while paying it in the month of March, 2015, as illegal, arbitrary and in violation of Articles 14, 21 and 300-A of Constitution of India and consequently sought a direction to the respondents to refund a sum of Rs.18,000/- and also Rs.1,39,010.20 along with interest at the rate of 18% per annum.

3. Counter-affidavit is filed by the respondents contending *inter-alia* as follows:

i) As per the re-categorisation of Trimmer, the petitioner automatically came under the cadre equal to Mechanic grade-II. As per the leave record as audited by the Audit Wing, the petitioner had 298 earned leaves for which amount was paid to him. Therefore, the averment that the petitioner had more than 300 earned leaves and other half pay leaves is incorrect.

ii) The allegation that the 3rd respondent while arranging gratuity deducted Rs.18,000/- is not correct, baseless and misleading. In fact, the petitioner himself agreed for adjusting Rs.20,000/- for payment towards Retired Employees Medical Benefit Scheme vide his application dated 01.08.2014. In so far as non-payment of Rs.1,39,010/- is concerned, the said amount was deducted from the Terminal Leave Encashment towards excess payment made to the petitioner at the time of fixation as Mechanic Grade-I by allowing notional increment. In fact, the petitioner was not entitled for the notional increment, since he was already granted 12 years Special Grade stagnation fixation before his promotion. The said discrepancy was pointed out by the Audit Wing while arranging the retirement benefits. As per Regulation 9(1) (a) of the APSRTC Employees (Pay and Allowances) Regulations, 1964, when an employee, who was placed on Special Grade on completion of 12 years of service is promoted to any higher post/higher grade from the Special Grade, his pay in the higher post/grade shall be fixed in the promotional scale in the next stage without adding notional increment in the lower post. Therefore, according to the respondents, on account of erroneous fixation of pay by allowing notional increment, the petitioner was paid more than what he was entitled for and the petitioner cannot contend that the recovery of the said amount cannot be made since he retired from service.

4. At the hearing of the writ petition, learned counsel appearing for the petitioner submits that the petitioner is not pressing the claim of non-payment of gratuity amount of Rs.18,000/-. Therefore, the sole question that remains is whether the Corporation is justified in withholding a sum of Rs.1,39,010.20 on the ground that it was the result of excess payment to the petitioner by granting notional

increment, for which the petitioner is not entitled, as he was already granted 12 years Special Grade stagnation increment fixation before his promotion.

5. The petitioner was retired from service on 31.08.2014 and the retiral benefits were paid to him in the month of March, 2015. The petitioner has no role in getting notional increment, which according to the respondents, he is not entitled to. Obviously the petitioner did not play fraud or misrepresentation for obtaining the said notional increment. According to the respondents, it came to the notice when it was pointed out by the Audit Wing while granting retiral settlements to the petitioner. According to the learned standing counsel for the respondents, even though the petitioner has no role in getting the notional increment, he is not entitled for the same as per the APSRTC Employees (Pay and Allowances) Regulations, 1994, and he cannot seek a direction from this court to refund the said amount recovered by the Corporation.

6. Learned standing counsel for the Corporation relied on the decision in '**Chandi Prasad Uniyal vs. State of Uttarakhand**', wherein the Apex Court held as follows:

“...We are not convinced that this court in various judgments referred to hereinbefore has laid down any proposition of law that only if the state or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered.

....Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

7. On the other hand, it is argued by the learned counsel appearing for the petitioner that since the wrong calculation of emoluments was made by the respondents and not on account of any fraud or misrepresentation played by the petitioner and also in view of the fact that he has played no role in fixation of the emoluments to be paid on his retirement, the Corporation is not entitled to recover the said amount. Learned counsel appearing for the petitioner relied on the decision of the Apex Court in '**State of Punjab vs. Rafiq Masih**'. In the said case, a reference

was made to the Hon'ble Supreme Court, in view of an apparent difference of views expressed by the Apex Court in some judgments on the issue, which is similar to the one involved in the present case and the Hon'ble supreme Court having expressed the view that if the Supreme Court exercises its extra-ordinary powers under Article 142 of the Constitution of India, which vests the power in the Supreme court to pass equitable orders in the ends of justice, the decisions of the court based on different scales of Articles 136 and 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the judgments referred to it. Therefore, the Hon'ble Supreme Court ultimately expressed the view that the reference was unnecessary and without answering the reference, sent back the matters to the Division Bench for its appropriate disposal. However, the Hon'ble Supreme Court issued certain guidelines in para 12, which are as under:

“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. 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.”

8. Turning to the facts of the present case, the petitioner was retired from service on 31.08.2014 and the retirement benefits were paid to him in the month of March, 2015, deducting an amount of Rs.1,39,010/-. Admittedly, the petitioner is a

Class-III employee. The amount was withheld from out of the retirement benefits after retirement of the petitioner. Recovery of the said amount, in the considered opinion of this court, is iniquitous, harsh and arbitrary, as it relates to Class-III employee, after his retirement.

9. In view of the foregoing reasons, the writ petition is allowed, directing the respondents to pay an amount of Rs.1,39,010/- (Rupees one lakh thirty nine thousand and ten only) which the respondents have recovered from the leave salary of the petitioner, within a period of three months from the date of receipt of a copy of this order. Miscellaneous petitions, if any, in this writ petition, shall stand closed. No order as to costs.

R. KANTHA RAO, J

Date: 24.07.2015

Note: L.R. copy to be marked

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HON'BLE SRI JUSTICE R. KANTHA RAO

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Writ Petition No.16652 of 2015

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Date: 24.07.2015

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