

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

W.P. No.23808 of 2015

Between:

The Under Secretary to the Government of India
Ministry of Communication & I.T., Dept., of
Telecommunications (P.G. & I Section)
Sanchar Bhawan, New Delhi and others.

... Petitioners

And

Y.Sahab Saran and another.

... Respondents

JUDGMENT PRONOUNCED ON 23.11.2015

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**THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE U.DURGA PRASAD 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? :

**THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND**

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

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W.P. No.23808 of 2015
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ORDER: (Per the Hon'ble Sri GC, J)

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This writ petition has been filed questioning the order dated 20.04.2015 passed in O.A. No.020/407/2015 on the file of the Central Administrative Tribunal, Hyderabad and quash the same as illegal and arbitrary.

Brief facts of the case are that the 1st respondent herein filed O.A. No.020/407/2015 seeking to call for the records relating to the letter No.A2/YS/92 dated Nil.05.2013 issued by the Communication Accounts Officer, Pension Revision Cell (PRC), Office of the Pr.Controller of Communication Accounts, A.P. Circle, Triveni Complex, Abids, Hyderabad and set aside the same as being illegal and arbitrary.

The learned Tribunal vide its impugned order dated 20.04.2015 allowed the said application and quashed the same with a direction to the respondents therein to stop further recovery from the applicant and to refund the amounts already recovered from June, 2013 till date to the applicant, within three months, from the date of receipt of a copy of the order. Aggrieved by the same, the petitioners filed the present writ petition.

The learned standing counsel for the petitioners submitted that pursuant to the recovery notice issued to the respondent, employee, he submitted a representation dated 16.05.2013 requesting the department to recover the amount on monthly instalments at 50% of his pension or Rs.8,000/-, whichever is more. Taking into consideration the same, the learned standing counsel submitted that the employee is liable to pay the amount as agreed by him. He submitted that the learned Tribunal had not considered the same and therefore, the impugned order is liable to be set aside.

On the other hand, the learned counsel for the respondent, employee, submitted that the learned Tribunal had taken into consideration the latest judgment rendered by the Apex Court in the case of **STATE OF PUNJAB AND OTHERS etc., Vs. RAFIQ MASIH (WHILE WASHER) etc.,** dated

18.12.2014 in Civil Appeal No.11527 of 2014, on which the respondent placed reliance before the learned Tribunal, and came to a conclusion to allow the said O.A. and accordingly, set aside the impugned order therein and quashed with a direction to the writ petitioners, respondents therein, to stop further recovery from the applicant and to refund the amounts already recovered from June, 2013, within three months from the date of receipt of a copy of the order. Therefore, he submitted that there is no reason to interfere with the impugned order.

Heard the learned counsel on either side and perused the material on record.

As could be seen from the record, it is clear that the respondent, employee, made a representation dated 16.05.2013, as stated by the learned standing counsel hereinabove, but thereafter, the learned Tribunal allowed the said O.A. vide its impugned order dated 20.04.2015 wherein had taken into consideration the latest judgment of the Apex Court, referred to supra, wherein the Apex Court held as under:

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

- (i) Recover 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."

In view of the above, the respondent, employee, very much fall within the clause (ii) (iii) and (v) of the said observations made by the Apex Court and therefore, the learned Tribunal had rightly taken into consideration the same and rendered the impugned order.

Further, it is also to be noted here that the Apex Court in the referred judgment had observed at para 8 as under:

"The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover."

Having regard to the facts and circumstances of the case and the submissions made by the learned counsel on either side, we do not see any reason to interfere with the impugned order and therefore, this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed.

As a sequel, miscellaneous petitions, if any, stands closed.
There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE U.DURGA PRASAD RAO

Date: 23.11.2015

LSK

