

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.38124 of 2016

1. Union of India,
Rep. By the General Manager,
Southern Railway,
Park Town, Chennai.

2. The Divisional Railway Manager,
Southern Railway,
Tiruchirappalli Division,
Tiruchirappalli - 1.

3. The Divisional Personnel Officer,
Southern Railway,
Tiruchirappalli Division,
Tiruchirappalli - 1.

4. The Senior Divisional Financial Manager,
Southern Railway,
Tiruchirappalli Division,
Tiruchirappalli - 1.

.. Petitioners

versus

1. The Registrar,
Central Administrative Tribunal,
Chennai.

2. S. Palanivel.
3. S.Ramamurthy.
4. M.Usha Rani.
5. P.Sankararam.
6. N.Chandrasekaran.
7. V. Meera.

8. J.Aneetha.
9. Sasikala Venkat.
10. Indirani Adhishesan.
11. Sonia Alison Micketch.
12. R.Sundari.
13. Santha Sadasivam.
14. R.Rajalakshmi.
15. K.Sankar.
16. R.Nandagopal.
17. S.Hemalatha.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records on the file of the 1st respondent in O.A.No.1574 of 2012 dated 16.12.2015 and quash the same.

For Petitioners : Mrs.Bhavani Subbaroyan

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition by Railways, is to an order made in O.A.No.1574 of 2012 dated 16.12.2015, by which the Central Administrative Tribunal, Madras Bench, directed the writ petitioners not to give effect to the recovery of excess payment made, pursuant to the withdrawal of Modified Assured Career Progression Scheme (MACP) benefit.

2. Facts leading to the writ petition are that private respondents, were appointed in the Ministerial cadre in Group- 'C', Southern Railways, Tiruchirappalli Division and vide proceedings dated 03.11.2009, 29.07.2010, 14.10.2010, 19.10.2010 and 15.12.2010 respectively, they were allowed III

MACP Scheme benefits. Railways found that the private respondents are not entitled to III MACP Scheme benefits and proceeded to withdraw the same, vide orders dated 03/10.04.2012 and 23/27.11.2012, respectively. Consequently, the excess payment made to the private respondents, has been directed to be recovered. Therefore, recovery proceedings were challenged by the respondents, before the Central Administrative Tribunal, Madras Bench in O.A.No.1574 of 2012.

3. During the course of the hearing of the said OA, learned counsel for the private respondents has submitted that it is suffice a direction is issued to the writ petitioners not to effect any recovery of excess payment. The respondents have relied on a decision of the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) etc.***, reported in (2015) 4 SCC 334.

4. Railways, have contended that the III MACP Scheme benefit ought not to have been given to the respondents and prayed to sustain the same. Added further, Mr.V.Radhakrishnan, learned counsel for Southern Railways also contended that clauses 1 to 3 in the above reported judgment have to be read cumulatively and in such circumstances, the respondents are not entitled to the relief sought for.

5. Adverting to the above limited contentions made, the Central Administrative Tribunal, Madras Bench, after extracting paragraph No.18, of the judgment in *State of Punjab Vs. Rafiq Masih (White Washer) etc.*, reported in (2015) 4 SCC 334 and by observing that the clauses referred in said paragraph, have to be read independently and holding that the respondents herein, Group-'C' employees would fall under Clause No.1 of paragraph No.18, disposed of the Original Application No.1574 of 2012, vide order dated 16.12.2015, directing the writ petitioners herein, not to give effect to recovery of excess payment made, pursuant to the, withdrawal of MACP Scheme benefits.

6. Though, Ms.Bhavani Subbarayan, learned counsel for the writ petitioners assailed the correctness of the order made in OA.No.1574 of 2012 dated 16.12.2015, assailing the very same grounds, made before the Central Administrative Tribunal, Madras Bench, and further added that the tribunal has failed to consider that recovery of excess payment within five years could be made as per the judgment of the Hon'ble Supreme Court and therefore, the tribunal erred in directing the writ petitioners not to recover, this Court is not inclined to accept the contentions of the learned counsel for the writ petitioners, for the reason that while summarising the situations, wherein recovery would be impermissible, the Hon'ble Supreme

Court in *State of Punjab Vs. Rafiq Masih (White Washer) etc.*, reported in (2015) 4 SCC 334, has considered a catena of decisions, dealing with recovery. While doing so, the Hon'ble Supreme Court considered the hardship, which is likely to be faced by the employees belonging to the lower ranks, Class III and Class IV (Groups C & D), if recovery has to be made.

7. In the abovesaid context, as to why recovery should not be made from the above class of employees, it is worthwhile to extract the decisions considered by the Hon'ble Supreme Court in *Rafiq Masih's case (cited supra)*.

15. Examining a similar proposition, this Court in *Col. B.J. Akkara v. Government of India*, (2006)11 SCC 709, observed as under: "**28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the**

error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery." (emphasis is ours)

A perusal of the aforesaid observations made by this Court in Col. B.J. Akkara's case (supra) reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV - sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

16. This Court in *Syed Abdul Qadir v. State of Bihar* (2009 (3) SCC 475) held as follows:

"59. Undoubtedly, the excess amount that has

been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter- affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made." (emphasis is ours)

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir's case (supra), that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh

consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

17. Last of all, reference may be made to the decision in *Sahib Ram Verma v. Union of India*, (1995) Supp. 1 SCC 18, wherein it was concluded as under:

"4. Mr. Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the

Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."(emphasis is ours)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs.700-1600. The above pay parity would extend to Librarians, subject to the

condition that they possessed the prescribed minimum educational qualification (first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science, the degree of M.Lib. Science being a preferential qualification). For those Librarians appointed prior to 3.12.1972, the educational qualifications were relaxed. In Sahib Ram Verma's case (supra), a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the concerned appellants were ineligible for the same. The concerned appellants were held not eligible for the higher scale, by applying the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

8. From **Rafiq Masih's case**, it could be deducted that the Hon'ble Supreme Court, has considered, various situations, where recovery was sought to be made by the department, and as to how such recovery would cause hardship to the employees in Class 'C' and 'D', persons due to retire shortly and retired, and other cases. Enumeration of cases, was only illustrative and not cumulative.

9. Contentions of the learned counsel for the writ petitioners that cumulative effect of all clauses in paragraph no.18 of the reported judgment, ought to have been considered by the tribunal, cannot be countenanced, in the light of paragraph no.19 of the said judgment wherein, the Hon'ble Supreme Court has considered that the respondents therein were employees in Class III and Class IV service (or Group C and Group D service). Paragraph Nos.18 and 19 of the said judgment are extracted hereunder.

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.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

10. Clause (1) deals with employees in Class III and Class IV or Group 'C' and Group 'D' Service. Clause (2) merely speaks about retired employees, or employees due to retire within one year, of the order of recovery. Clause (2) does not restrict to only Group 'C' or Group 'D'. It applies to all the employees, irrespective of Class, whether 'C' or 'D', as the case may be. So also the other Clauses (3) and (4), of the judgment. Each clause is separate, and not confined to only Class III and IV, ie., Group 'C' and Group 'D' employees alone.

11. Interpretation of Railways that there should be a cumulative effect of all the clauses together, would nullify the judgment of the Hon'ble Apex Court.

12. When the Hon'ble Supreme Court has summarized only few situations on the basis of the judgments considered, contention of railways that all the clauses should be cumulatively considered for exclusion of recovery proceedings, cannot be accepted. We do not find any illegality in the order of the tribunal, warranting interference. Hence, the writ petition is dismissed. No Costs.

[S.M.K., J.] [N.A.N., J.]
03.11.2016

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