THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION No. 26691 of 2015

ORDER: ***(Per VRS,J)***

The South Central Railway has come up with the present writ petition, challenging an order of the Central Administrative Tribunal, allowing an application filed by the 1st respondent, who was a retired Shunting Master.

2. Heard Smt. T. Balajayasree, learned standing counsel for Railways, appearing for the petitioners. Mr. M. Bhaskar, learned counsel, takes notice for the 1st respondent.

3. The 1st respondent was originally appointed as a Casual Labour in the Operating Department of the Railways and he attained temporary status on 30.01.1979. Subsequently, his services were regularized as a Box Boy with effect from 10.08.1983. He gained promotions to the Grades of Pointsman-B and Pointsman-A. Later, he was selected and promoted as a Shunting Master Grade-II in 1998. After the promotion to the next higher post of Shunting Master Grade-I in 2006 and after getting the benefits of revised scale of pay,

as per the recommendations of the 6th Pay Commission, the 1st respondent retired from service on 31.03.2013.

4. At the time of retirement, the Railway Administration withheld an amount of Rs.1.00 lakh from out of the terminal benefits, on the ground that there was a wrong fixation of pay, while implementing the recommendations of the 6th Pay Commission, and that a recovery of Rs.91,906/- had to be made. Challenging the action of the Railway Administration, the 1st respondent filed an application in O.A.No.1251 of 2013 before the Central Administrative Tribunal. The Central Administrative Tribunal allowed the application, by an order, dated 20.03.2015. Aggrieved by the said order, the Railway Administration is before us.

5. Very strong reliance is placed by the learned standing counsel for Railways upon Rule 15 of the Railway Services (Pension) Rules (for short 'the Pension Rules'), 1993, in support of her contention that when statutory Rules permit recovery of an excess payment wrongfully made, the 1st respondent was bound by the statutory Rules. It is also her contention that so long as the Pension Rules are not challenged and accepted, the 1st respondent cannot stop the recovery.

6. But, we do not think that the said contention can be accepted. The object behind Rule 15 of the Pension Rules is only to recover the

amounts outstanding from a Government servant as on the date of his retirement. What are Government dues are also defined in sub-rule (3) of Rule 15. The present recovery does not come within the purview of sub-rule (3) of Rule 15. Therefore, Rule 15 cannot be put against the 1st respondent.

7. It is true that a three-Judge Division Bench of the Supreme Court found, in ***State of Punjab Vs. Rafiq Masih***[1], that there was no conflict between the decisions in ***Shyam Babu Verma Vs. Union of India***[2]***,*** ***Sahib Ram Vs. State of Haryana***[3], and ***Chandi Prasad Uniyal Vs. State of Uttarakhand***[4]. But, the fact remains that by a subsequent decision reported in ***State of Punjab and others Vs. Rafiq Masih (Whitewasher)***[5], the Supreme Court pointed out that there cannot be any recovery from the employees belonging to Class-III and Class-IV, and that there cannot be any recovery from the employees, who are due to retire within one year, or from the retired employees. The alleged wrong pay fixation in this case has taken place in the year 2008, when the recommendations of the 6th Pay Commission were implemented with effect from 01.01.2006. Till the date of retirement of the 1st respondent on 31.03.2013, the Railway Administration was

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[1] (2014) 8 SCC 883
[2] (1994) 2 SCC 521
[3] 1995 Supp. (1) SCC 18
[4] (2012) 8 SCC 417
[5] (2015) 4 SCC 334

in a state of slumber. At the time of retirement, it was virtually after 5 to 7 years of the implementation of the recommendations of the 6th Pay Commission, that the recovery was sought to be made. Therefore, the Tribunal was right in following the latest decision of the Supreme Court and directing refund. Hence, we find no justification to interfere with the order of the Tribunal. Therefore, the Writ Petition is dismissed.

8. However, since it is contended that the Tribunal is ceased of a contempt petition, we grant time to the petitioner to pay the amount within a period of four (4) weeks from the date of receipt of a copy of this order. Until then, the contempt petition shall be put on hold.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

4th November, 2016
cbs

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