

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.17610 of 2016

Order: (per V.Ramasubramanian, J.)

Challenging the order of recovery of the excess gratuity paid to him from the commuted value of pension, the 1st respondent filed an application in O.A.No.553 of 2014 on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad. The Tribunal allowed the application based upon the law declared by the Supreme Court. However, the Union of India is before us challenging the said order.

2. Heard Mr. B.Narayana Reddy, learned Assistant Solicitor General of India and Mr. T.Koteswara Rao, learned counsel for the 1st respondent.

3. Admittedly, the 1st respondent who was working as a Scientific Assistant took voluntary retirement on 14-3-2008. As per the Office Memorandum dated 10-12-2009 issued by the Department of Pension and Pensioners' Welfare, New Delhi, the pension payable to the petitioner was revised based upon the recommendations of the 6th Pay Commission. The petitioner was also granted added benefit of 5 years of qualifying service.

4. However, subsequently an amount of Rs.61,685/- was recovered from his pension, on the ground that by the Office Memorandum dated 10-12-2009, the benefit of adding

some years of qualifying service stood withdrawn from 01-01-2006.

5. But there are two things that the Tribunal correctly took note of. The first is paragraph-4 of the Office Memorandum dated 10-12-2009 which reads as follows:

“4. The overall calculation may take into account revised gratuity and revised pension, including arrears up to date of revision based on these instructions. However, no recoveries would be made in the cases already settled.”

6. The second aspect is the law laid down by the Supreme Court in **STATE OF PUNJAB v. RAFIQ MASIH** [(2014) 8 SCC 833]. In paragraph-12 of the said decision, the Supreme Court has formulated certain situations in which recoveries are impermissible. Clause (ii) of paragraph-12 of the said decision reads as follows:

“12(ii). Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.”

7. The case of the 1st respondent is squarely covered by the principles laid down by the Supreme Court as well as paragraph-4 of the Office Memorandum dated 10-12-2009. Therefore, the Tribunal was right in allowing the application. We see no justification to interfere with the said order. The writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

24th October, 2016.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.17610 of 2016
(per VRS, J.)



24th October, 2016.
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