

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.12.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.25844 of 2017

Mrs.Anuradha Sivakumar

Petitioner

Versus

- 1 Bharat Sanchar Nigam Ltd
Chennai Telephones
rep. by its Director
No.10 Millers road
Chennai - 600 010.
- 2 The Senior General Manager Finance
BSNL Chennai Telephones
No.78 Purasawakkam High Road
Chennai- 600 010.
- 3 The Chief General Manager
Chennai Telephones
BSNL Chennai Telephones
No.78 Purasawakkam High Road
Chennai - 600 010.
- 4 Central Administrative Tribunal
Additional Bench at Chennai
rep. by Registrar Chennai - 600 104.

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records on the file of the 4th respondent relating to the impugned order dated 14th July 2017 in O.A.No.1468 of 2016 and quash the same and further direct respondents 1 to 3 to make payment of (I) Rs.90,207/- for illegal deduction (ii) Rs.35,680/- towards interest for delayed payment of gratuity and (iii) Rs. 10,00,000/- towards mental agony (iv) Rs. 1,00,000/- towards costs in all totalling to Rs.12,25,887/-.

For petitioner : Mr.Gurmeet Kour for
M/s.R&P Partners
For RR1 to 3 : Mr.S.Gopinath
R4 : Tribunal

ORDER

(Order of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. The writ petition has been filed by a retired employee of Chennai Telephones challenging the order passed by the Central Administrative Tribunal dismissing the Original Application filed by her seeking refund of certain amounts that were deducted from her DCRG, interest for delayed payment of gratuity, mental agony and towards costs.

3. It appears that the petitioner, who had been working as Lower Division Clerk in BSNL for about 21 years, had submitted her voluntary retirement and some delay of nearly 9 months had taken place in settling the terminal benefits, which is said to have been due to administrative reasons. The petitioner had claimed a sum of Rs.90,207/- towards the deduction made by the Department on the ground of wrong fixation made earlier, Rs.35,680/- towards interest for the delayed payment of gratuity, Rs.10,00,000/- towards mental agony and Rs.1,00,000/- towards costs, totalling to Rs.12,25,887/-.

4. The learned counsel appearing for the petitioner, relying upon the decisions in SYED ABDUL QADIR v. STATE OF BIHAR ((2009) 3 SCC 475), UNION OF INDIA v. M.BHASKAR ((1996) 4 SCC 416) and SHYAM BABU VERMA v. UNION OF INDIA ((1994) 1 LLJ 815 SC) would submit that the writ petitioner having been not committed any fraud or misrepresentation to cause the employer to make the wrong payment and hence, the amount so wrongly paid to the writ petitioner cannot be recovered, however, it has been recovered and on that score, a huge delay has occurred and hence, the present writ petition has been filed seeking refund of the amount recovered, interest for the delayed payment and some compensation.

5. It is brought to our notice that covering the above decisions, the Apex Court has held in CHANDI PRASAD UNIYAL AND OTHERS v. STATE OF UTTARKHAND AND OTHERS as under:-

"15. 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. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as tax payers money which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favoritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without 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."

6. In the case on hand, it is an admitted position that wrong payment was committed initially, and the same is also not denied by the petitioner. Therefore, the only issue that could be raised by the petitioner in this case is whether recovery from a retired employee belonging to Class III and IV (Group C and Group D service) is permissible or not. But, such an argument cannot be with any force as the employee in the case on hand had not been superannuated, but, went on Voluntary Retirement. The probability of attempt for avoidance of the consequences of wrong payment viz., recovery of wrong payment cannot be simply ignored when the employee went on Voluntary Retirement after receipt of the wrong payment. Therefore, on such mere technicalities, the petitioner cannot have a case against the recovery made by the employer.

7. Further, the money so wrongly paid by the employer does not belong to either the employer or the employee and it is a

public money. It must have been paid due to some negligence. The Apex Court had settled the law in such situations that it has to be necessarily recovered. Even assuming that it was recovered without issuing any notice to the petitioner, the fact remains that the management as well as the employee knows the fact of wrong payment. In such a situation, it can be deemed that the mistake is mutual as pointed out by the Apex Court in the decision cited supra. Therefore, such recovery cannot be termed as illegal and the amount so recovered cannot be sought to be refunded to the petitioner.

8. It appears that there is also some delay in settling the terminal benefits and therefore, the petitioner claims interest for the delayed period. In the peculiar situation of the case on hand, there is every chance for the delay because of the administrative process in recovering the wrong payment. Therefore, the petitioner will not be entitled to any interest for such period of delay that has been caused due to administrative process. It also cannot be disputed that the money so recovered is the public money and therefore, on recovery of the same, the petitioner cannot be said to have undergone any mental agony.

9. In the light of the above observation, the writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk.

To:

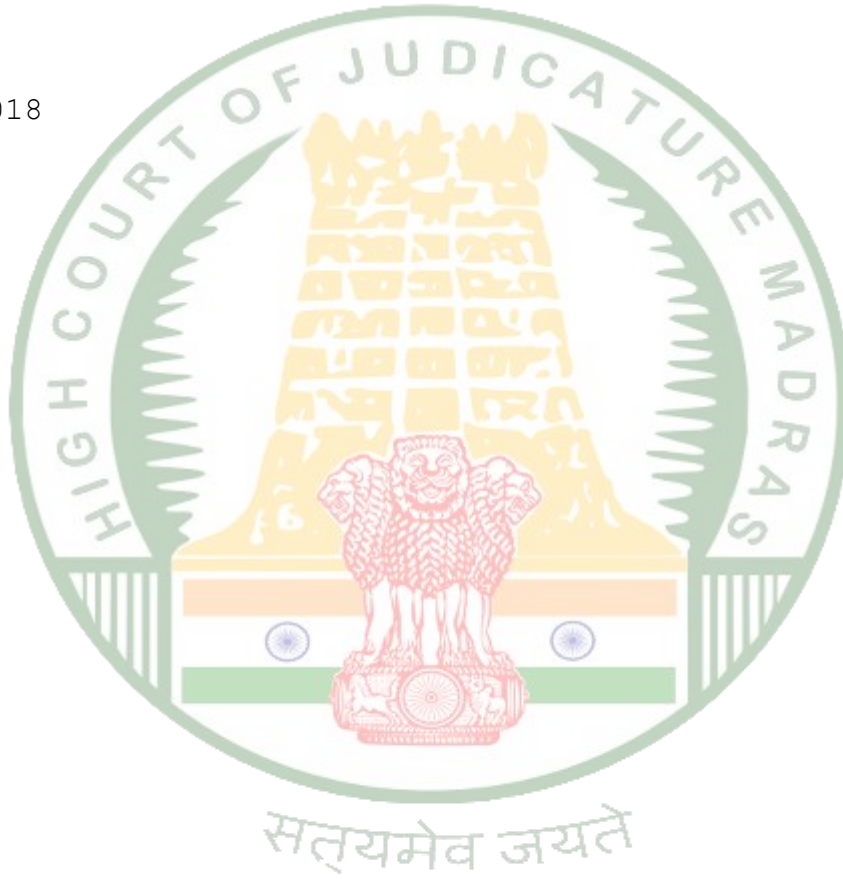
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+1 cc to M/s.R & P Partners sr 88213
+1 cc to M/s.S.Gopinathan Advocate sr 88224

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