

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

[Special Original Jurisdiction]

MONDAY THE NINETEENTH DAY OF JUNE
TWO THOUSAND AND SVENTEN

P R E S E N T

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
HONOURABLE DR.JUSTICE SHAMEEM AKTHER

WRIT PETITION No. 18708 OF 2016

Between:

Union of India,
Represented by its Secretary
Government of India,
Ministry of Communications & IT
Department of Posts, Dak Bhavan,
Sansad Marg,
New Delhi & Ors.

... Petitioners

V/s.

B. Syed Imam & Anr.

... Respondents

Counsel for the Petitioner : Sri B. Narayan Reddy

Counsel for the Respondent : Sri M. Venkanna

The court made the following: : [order follows]

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
A N D
HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No. 18708 OF 2016

ORDER : (Oral, *Per* the Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed invoking the jurisdiction of this Court under Article 226 of the Constitution of India seeking writ of Certiorari by calling for the records relating to order dated 05/8/2015 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad and to quash the same by declaring it as contrary to law, illegal, arbitrary improper and to pass such other suitable orders as this Court may deem fit and proper in the circumstances of the case.

2. Heard the learned counsel for the parties.

3. The learned Tribunal while allowing the O.A.No. 021/00764/2014 filed by the respondent No.1, directed the petitioners not to effect any recovery in pursuance of the impugned order dated 07/7/2014 and they were also directed to refund the amount already recovered from the petitioner.

4. Learned counsel appearing on behalf of the petitioner argued that the Central Pay Commission recommended grant of three financial up-gradations after completion of thirty years of continuous service. Respondent No.1 was granted financial up-gradation under TBOP on 09/9/1994. He was successful in the Departmental Competitive Examination for the post of Inspector of Posts was promoted as IPO on 23/8/1995, which is the second financial up-gradation. He was again promoted to the cadre of Assistant Superintendent of Post Offices w.e.f. 04/9/2006, which is the third financial up-gradation.

5. Learned counsel for the petitioners further submits that as he got his third financial up-gradation on 04/09/2006 on completion of regular service of 28 years, he is not eligible for the relief claimed. However, the learned Tribunal ignored this fact and allowed the OA filed by the respondent No.1.

6. We note that the learned Tribunal while allowing the OA filed by respondent No. 1 has relied upon a case of **STATE OF PUNJAB & ORS etc. V/s. RAFIQ MASIH [White Washer] etc.**, vide Civil Appeal No. 11527 of 2014, dated 18/12/2014, whereby the Hon'ble Supreme Court held at para no.12 as under :

“12. 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 hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be permissible 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. ”

7. The condition No. [iii] noted above states that recovery from employees would be permissible when excess payment has been made for a period in excess of **five** years, before the order of recovery is issued.

It is an admitted fact that **MACP** was granted to the respondent No.1 vide order dated 19/4/2010 w.e.f. **09/09/2008**, whereas the impugned recovery of excess amount was passed on **04/6/2014**. Thus, the said period is five years and nine months i.e., beyond five years period.

While relying upon the aforesaid judgment of the Hon’ble Supreme

Court, the learned Tribunal directed the petitioners not to effect any recovery in pursuance of the impugned Annexure-I, letter dated 07/7/2014. The learned Tribunal further directed to refund the amount already deducted.

8. In view of the above, we are of the considered opinion that there is no illegality or perversity in the order passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad. We hereby confirm the same.

9. Finding no merit, this writ petition is dismissed at the stage of admission. No order as to costs.

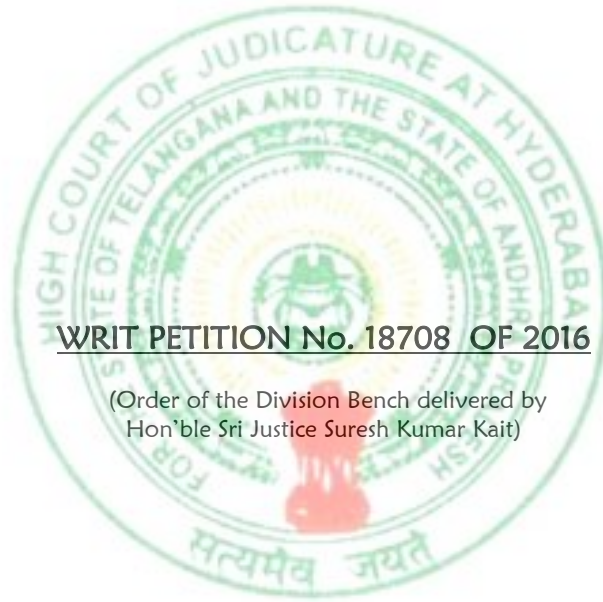
10. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

Dr. JUSTICE SHAMEEM AKTHER

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
A N D
HON'BLE DR. JUSTICE SHAMEEM AKTHER

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WRIT PETITION No. 18708 OF 2016

(Order of the Division Bench delivered by
Hon'ble Sri Justice Suresh Kumar Kait)

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