

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.21951 OF 2001

ORDER

Heard Sri A.Prabhakara Sarma, learned counsel appearing for the petitioner and Sri N.Vasudeva Reddy, learned Standing Counsel appearing for the respondent-Corporation.

This writ petition is filed seeking to issue a writ of Mandamus declaring the order passed by the 2nd respondent, dated 30.8.1999 as confirmed by the 1st respondent *vide* order dated 24.12.1998 and consequential order of the 2nd respondent dated 20.7.2001 as arbitrary and illegal, and to issue a direction not to recover the amounts from the petitioner.

It is the case of the petitioner that he was appointed as conductor on 29.4.1975; that while working as such, he has responded to a recruitment notification to the post of Junior Clerk; that through regular selection process, he was selected and appointed as Junior Clerk on 09.06.1980; that he was further promoted as Deputy Superintendent (Personnel) in the cadre of Senior Assistant; that at the time of pay fixation in the cadre of Junior Clerk, his pay

was fixed in terms of Regulation 7-A (e) as amended by Circular dated 20.10.1986, on par with his junior; that the respondent-Corporation has issued the show cause notice dated 20.8.1999 and thereafter, passed final order on 30.8.1999 bringing his pay down on the ground that his pay was erroneously fixed, and issued consequential proceedings dated 27.8.2001 whereunder an amount of Rs.33,024.73 ps was sought to be recovered.

At the time of admitting the writ petition on 18.10.2001, this Court *vide* W.P.M.P.No.27653 of 2001 granted interim direction to recover only an amount of Rs.350/- per month from the salary of the petitioner.

Learned counsel appearing for the petitioner has relied upon a judgment of the Apex Court in *State of Punjab and others vs Rafiq Masih (White Washer) and others*¹ wherein the Apex Court at para 18 had laid down certain principles for recovery of the amounts from the employees to whom erroneous amounts were paid by the employer. Para (iii) reads as under:

“Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued”.

¹ (2015) 4 SCC 334

Admittedly, in the instant case, amounts were paid for a period in excess of 5 years and after five years, an attempt was made by the employer to recover the said excess amount.

Learned Standing Counsel appearing for the respondent-Corporation contends that when respondent-Corporation noticed erroneous pay fixation of the petitioner, it can recover the amount paid excess to the petitioner at any time.

I have heard the rival submissions made by the learned counsel on either side.

In view of the law laid down by the Apex Court in *State of Punjab and others (1 supra)*, I am afraid, the respondent-Corporation cannot recover the amounts and admittedly, in the instant case, the Corporation has paid the amounts for the period in excess of five years before the order of recovery.

In the light of the above referred judgment, the impugned order dated 30.8.1999 passed by the 2nd respondent as confirmed by the 1st respondent *vide* order dated 24.12.1999, and consequential order of the 2nd respondent dated 27.8.2001, are set aside. Any amounts

recovered from the petitioner so far, should be refunded by the respondent-Corporation.

Accordingly, the Writ Petition is allowed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

20th December, 2017
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