

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.9958 and 9975 of 2009

COMMON ORDER:

Heard Smt.K.Udaya Sri for petitioners and Sri N.S.Pattabhi Rama Rao for respondents.

The petitioners in these two writ petitions challenge order No.CRP/PER/PM/3932-M/398, dated 12.03.2007, drafting petitioners as General Mazdoors with retrospective effect and further recovering amount paid to petitioners while discharging the duties of General Mazdoors with retrospective effect, as illegal, arbitrary and violative of principles of natural justice.

The petitioners joined respondent-Company as Badli Fillers and were upgraded as Coal Fillers. The petitioners, when were working as Coal Fillers, were drafted to work as General Mazdoors (underground) to meet the exigencies of the respondent-Company. According to petitioners, the scale of pay paid to Coal Fillers is more than the pay scale of General Mazdoors. Further, the drafting of petitioners as General Mazdoors was to meet the administrative exigency and therefore, the scale of pay of petitioners drawn as Coal Fillers was protected by the respondent-Company. The petitioners, though have been working as General Mazdoors, continued to draw the scale of pay of Coal Fillers and the respondent-Company all of a sudden

issued the proceedings impugned in the writ petitions, which read thus:

“Sub: Excess paid wages-Reg.

Ref: SO to GM Lr.No.SRP/GMO/F5/9369, dated 20.09.2008.

Reference to the above, it was informed that you were paid excess wages to an extent shown against your names while you were working at Chennur-2 Incline.

Please note that this amount will be recovered from your salary at the rate of Rs.2000/- per month from monthly wages and also 50% of IR arrears to be paid in October, 2008.”

The petitioners challenge the change of fixation of pay with retrospective effect further directing recovery from petitioners as illegal and violative of principles of natural justice, for, the petitioners were not put on notice before recovery is affected. To bring home the submission that the petitioners were not put on notice, the petitioners rely upon the internal note of General Manager, dated 20.09.2008, and the consequential proceeding of Superintendent of Mine, dated 27.09.2008. The petitioners also challenge the recovery by placing reliance upon the decision of the Apex Court in **State of Punjab and others Vs. Rafiq Masih**¹ by contending that the amounts now paid to petitioners cannot and could not be recovered, for, they come under one category of the case or other as detailed in paragraph 18 of the decision, which reads as follows:

“It is not possible to postulate all situations of hardship which would govern employees on the issue of

¹ (2015) 4 Supreme Court Cases 334

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 impermissible in law:**

- (i) Recovery from the employees belonging to Class-III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) 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.
- (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.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

We are informed by the learned counsel representing the appellant State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

The appeals are disposed of in the above terms.”

(emphasis applied)

Sri N.S.Pattabhi Rama Rao appearing for respondents submits that the petitioners in the instant writ petition, by relying upon **Rafiq Masih's** case, challenge the very recovery of excess salary paid to them, for, basic details required for determination either of the scale of pay of Coal Fillers or General Mazdoors are not before the Court and whether transfer of petitioners from Coal Fillers to General Mazdoors was on their request and if so, with what terms and conditions the petitioners were drafted as General Mazdoors and the principle of the Apex Court in **Rafiq Masih's** case cannot be applied to the case on hand.

To the first submission that before ordering recovery, the petitioners were not put on notice, learned counsel for respondents, by referring to the proceedings impugned in the writ petitions and also in view of absence of a rebuttal in this behalf, consents that the proceedings impugned in the writ petitions were issued without putting the petitioners on notice or taking note of their objections, if any in this behalf.

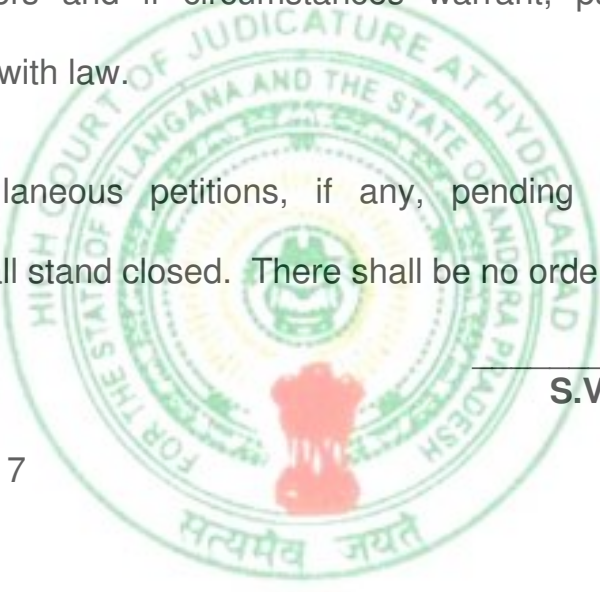
This Court is of the view that through the proceedings impugned in the writ petitions, the respondents are changing the scale of pay, determining the excess paid to petitioners and thereafter, ordering recovery. To conform the requirements of law and also to examine whether the petitioners are entitled to the benefit of the view taken by the Apex Court not only in **Rafiq Masih's** case but also the earlier cases on the point, they should have been put on notice, their explanation received and

orders passed as the circumstances warrant and in accordance with law.

Since these requirements are absent in the case on hand, the proceedings impugned in the writ petitions are set aside.

The writ petitions are ordered accordingly. The respondents, if circumstances warrant, pursuant to audit report or objections, if any, shall issue individual notices to petitioners, receive explanation, take note of the legal objections raised by the petitioners and if circumstances warrant, pass orders in accordance with law.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.



S.V.BHATT,J

Dt:31.07.2017

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