

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.10533 of 2002

Date: 26.10.2017

Between:

S. B. Niyogi

..Petitioner

And

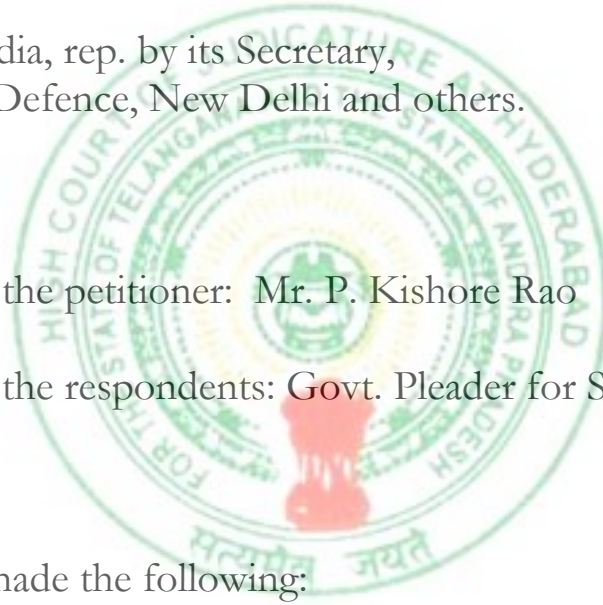
Union of India, rep. by its Secretary,
Ministry of Defence, New Delhi and others.

..Respondents

Counsel for the petitioner: Mr. P. Kishore Rao

Counsel for the respondents: Govt. Pleader for Services (TS)

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for issue of *Certiorari* to quash the order dated 23.04.2002 in O.A.No.86 of 2002 on the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for short, "the Tribunal").

The undisputed facts of the case are as follows:

The petitioner has joined in the Research and Development Organization, Ministry of Defence, Government of India, as Junior Scientific Officer on 26.06.1965. He was promoted as Deputy Chief Scientific Officer on 30.11.1987. He was further promoted as Additional Director and posted in the office of the Chief Resident Inspector, Directorate General Aeronautical Quality Assurance, HAL, Hyderabad in May, 1997.

Before the petitioner was promoted, he was drawing the pay scale of Rs.4,100-5,300/- as Deputy Chief Scientific Officer. On implementation of Fifth Pay Commission Recommendations with effect from 10.06.1997, his pay was revised in the pay scale of Rs.14,300-400-18,300/- with basic of Rs.17,100/-. Respondent No.4 has extended the benefit of F.R.22 (I)(a)(1) to the petitioner. At a later point of time,

respondent No.4 has realized that the petitioner was not entitled to the said benefit. When the said benefit was sought to be withdrawn, the petitioner has filed the aforementioned O.A. He has pleaded before the Tribunal that as the post of Additional Director carries the duties and responsibility of greater importance, than those attached to the Deputy Scientific Officer, he is entitled to pay fixation by applying F.R. 22(I)(a)(1).

The respondents have pleaded before the Tribunal that while in normal course, the petitioner would have been entitled to the benefit of the said Rule, as the pay scales of Rs.4,100-5,300/- attached to the post of Deputy Chief Scientific Officer and Rs.4,500-5,700/- attached to the post of Additional Director were merged under the Fifth Pay Commission, the petitioner is not entitled for the benefit of F.R.22 and that as the said benefit was wrongly allowed to the petitioner, the same was sought to be withdrawn. This plea of the respondents was found acceptance by the Tribunal. Placing reliance on the judgment of the Supreme Court in **Union of India and others vs. Ashok Kumar Banarjee**¹, the Tribunal held that in order to derive the benefit of F.R. 22 (I) (a) (1), it is not enough if a

¹ 1998 SCC (5) 242

person promoted to any post to another involving higher duties and responsibilities, but it must also be shown that he is moving from a lower scale attached to the lower post to a higher scale attached to a higher post. The Tribunal took into consideration, the fact that as the pay scales of feeder category as well as promoted post were merged, the petitioner does not satisfy the latter condition.

Sri P. Kishore Rao, learned counsel for the petitioner did not dispute the above discussed legal position based on which the Tribunal has rejected the relief to the petitioner. He, however, submitted that the petitioner was not at fault for fixation of higher scale, and that it would be inequities to recover the pay already drawn by the petitioner. In support of his submission, he placed reliance on *Sahib Ram vs. State of Haryana and others*².

No doubt in the said judgment, the Supreme Court held that as the fixation of higher pay scale for the petitioner before it was not on account of any misrepresentation made by him, the excess payment cannot be recovered from the appellant.

² 1995 Supp (1) Supreme Court Cases 18

In '*State of Punjab & others vs. Rafiq Masih (White Washer) & others*³' the Supreme Court has summarized a few situations wherein recovery of excess payments made by the employers would be impermissible in law, in para 18, as under:

“(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.”

The petitioner has occupied a reasonably high position and therefore does not fall under category (i) under para 18 of the judgment in *State of Punjab* (supra). He also does not fall in any other categories indicated in the said judgment. Therefore, he is not entitled to the benefit of retaining the excess pay. More over, though the writ petition is of the year 2002, there is no stay of recovery. Therefore, in all probability, the respondents must have already recovered the excess pay paid to the petitioner.

³ (2015) 4 SCC 334

In the light of the above discussion, the writ petition is dismissed. No order as to costs.

As a sequel to disposal of the writ petition, W.P.M.P. No.12947 of 2002 is disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

Date: 26.10.2017
Bss/Gk.



HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
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WRIT PETITION No.10533 of 2002
(per Hon'ble Sri Justice C.V. Nagarjuna Reddy)



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