

THE HON'BLE SRI JUSTICE SANJAY KUMAR
and
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No.38229 of 2016

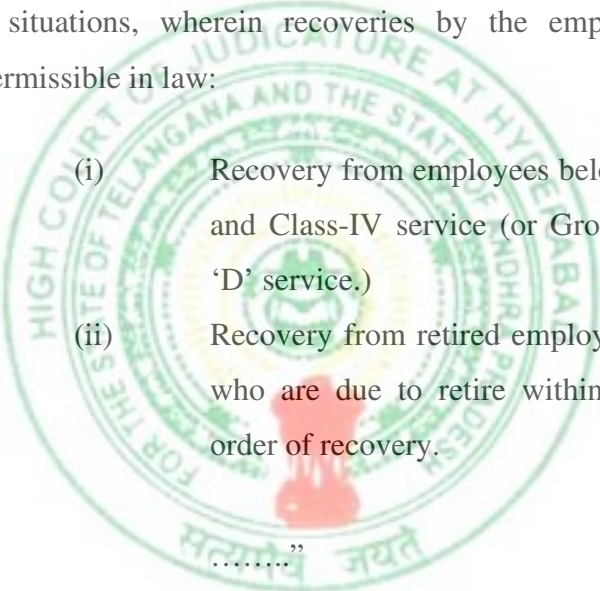
ORDER: (per SK, J)

The Union of India and Officers of the South Central Railway filed this Writ Petition aggrieved by the order dated 16.03.2016 passed by the Central Administrative Tribunal, Hyderabad Bench, in O.A.No.906 of 2014 holding to the effect that they, being the respondents in the O.A., were not entitled to recover the excess payments made to the first respondent/applicant pursuant to cancellation of the 3rd Modified Assured Career Progression Scheme (MACP) benefit extended to him.

It is not in dispute that the first respondent/applicant retired from service upon attaining the age of superannuation with effect from 30.06.2014. The memorandum whereunder the financial upgradation extended to him under the MACP was withdrawn was issued on the date of his retirement, 30.06.2014. By the same proceeding, the authorities also sought to recover a sum of Rs.1,20,672/- on the ground that it was paid in excess of the entitlement of the first respondent/applicant.

Sri J.M. Naidu, learned counsel for the first respondent/applicant places reliance upon **State of Punjab v. Rafiq Masih**¹. Therein, dealing with the issue of recovery of alleged excess payments made to an employee, the Supreme Court observed 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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- (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.

In the light of the aforestated edict of the Supreme Court, it is clear that the attempt of the petitioners to recover the so-called excess amount paid to the first respondent/applicant on the date of his retirement is clearly impermissible. We therefore find no reason to interfere with the order passed by the Tribunal holding to this effect.

¹ 2014 LawSuit (SC) 1075

The Writ Petition is devoid of merit and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

18th JANUARY, 2017.

SANJAY KUMAR, J

N. BALAYOGI, J

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