

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7160 OF 2004
WITH
CIVIL APPLICATION NO. 2191 OF 2004**

India Security Press & Currency Note
Press Staff Union and anr. ...Petitioners
Versus
The Union of India and anr. ...Respondents

**WITH
WRIT PETITION NO. 4819 OF 2004**

The Union of India and anr. ...Petitioners
Versus
India Security Press & Currency Note
Press Staff Union and anr. ...Respondents

None present for the petitioners in WP 7160/2004 and for the Respondents in WP 4819/2004.

Mrs. N.V. Masurkar a/w. Ms Nieyaati V. Masurkar and Mr.D.A. Dube for the Petitioners in WP 4819/2004 and for the Respondents in WP 7160/2004.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 19.07.2018.

ORAL JUDGEMENT:

1] On 14.9.2004, this court made the following order:

"Both these petitions are against an order passed by the Central Administrative Tribunal on 28.10.2002 on Original Application No. 253 of 2002. Both these Petitions are cross petitions. Both require a consideration and hence, Rule on both the petitions.

2. *However, by way of interim order, we direct the Union of India and the India Security Press not to effect any recovery of the amounts which has been paid to the employees concerned earlier. The Security Press will not be required to make any payments as claimed by the employees till the disposal of the Petitions. Though we are passing this order, we make it clear that in the event the employees' union succeeds finally, appropriate orders will be passed by the Court while disposing of the Petitions. We make it clear that the employees concerned will accompany the concerned wagons. Mr. Gangal, learned Counsel for the Security Press Union also states that the employees shall accompany the concerned wagons.*

3. *Parties be provided authenticated copy of this order."*

2] Since, neither were any representatives of the India Security Press and Currency Note Press Staff Union (Union), who are petitioners in Writ Petition No. 7160 of 2004 nor their advocates were appearing, we made orders on 28.6.2018, 29.6.2018 and 4.7.2018, in order to secure presence of the petitioners or in any case to grant the petitioners opportunity to pursue the petition instituted by them and to defend the petition instituted by the Union of India, i.e., Writ Petition No. 4819 of 2004, which, as noted in our earlier order, is only a cross petition. However, despite all such efforts, neither have any office bearers of the Union remained present nor any advocate appeared on their behalf. We accept the statement of Ms N.V. Masurkar,

learned counsel for the Union of India that consistent with the directions issued by us, the officers of Union of India have duly served the intimation to the office bearers of the Union. Ms Masurkar has also placed on record the copies of such intimations, which bear endorsement of the Union Leaders. Since, these are old matters, we do not propose to adjourn the same any further.

3] The challenge in Writ Petition No. 7160 of 2004 instituted by the Union is to the judgment and order dated 28.10.2002 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No. 253 of 2002 instituted by the Union. As against the judgment and order dated 28.10.2002, the Union, had in fact instituted a review petition vide Review Petition No. 20 of 2003 in the matter of non-consideration of the relief for payment of difference in fare between First Class and Second Class to the concerned members of the Union. However, this review petition also came to be dismissed on 10.3.2004. Therefore, the review dismissal order dated 10.3.2004 is also the subject matter of the challenge in Writ Petition No. 7160 of 2004.

4] Writ Petition No. 4819 of 2004 has been instituted by the Union of India against the very same judgment and order dated 28.10.2003 made by the CAT in O.A. No. 253 of 2002, to the extent, the CAT, has restrained the Union of India from recovering any amounts already paid to the members of the Union towards difference in fare between First class and Second Class when such members accompanies treasury wagons.

5] From the pleadings and records, it seems to be the grievance of the Union that its members working as Inspector (Control) or Assistant Inspector (Control) when accompanying treasury wagon were entitled to and in fact even paid First Class/AC 3 Tier Sleeper / AC Chair Car fare. However, this facility, was arbitrarily withdrawn with effect from 31.3.2000.

6] The CAT, in its orders dated 28.10.2002 and 10.3.2004 held that grant or otherwise of First Class fare, was essentially a policy decision. Therefore, if the Union of India takes a policy decision to either grant or withdraw such First Class fare to those accompanying treasury wagons, there

was no case made out to interfere with such policy decision in exercise of powers of judicial review.

7] From the record, we find that there was only a policy decision taken by the Union of India, at some stage, to grant First Class fares to Inspector accompanying the treasury wagons. This means that such Inspector had no vested rights as such to claim the First Class fares, even after policy decision was taken to rescind the same. There was no statute or statutory rule pointed out by the Inspectors, on the basis of which, such a claim was made or sought to be enforced. The pleadings also do not make out any case of promissory estoppel. In such cases, there is no reason to interfere with the view taken by the CAT that withdrawal of this facility requires no interference.

8] Ms Masurkar, learned counsel for the Union of India, in support of Writ Petition No. 4819 of 2004, however, submits that once the policy decision was withdrawn or rescinded, the Union of India had every right to even withdraw the amounts paid to the Inspectors. She submits that under S.R.202, there are sufficient powers vested in the Union of

India to effect such recoveries. She therefore, submits that the CAT, was not at all justified in restraining recoveries from the Inspectors. She relies upon the rulings of the Hon'ble Supreme Court in ***Union of India and ors. vs. Sujatha Vedachalam (Smt) and anr. - (2000) 9 SCC 187*** and ***V.Gangaram vs. Regional Joint Director and ors. - (1997) 6 SCC 139.***

9] According to us, the CAT, in the facts and circumstances of the present case, was entirely justified in restraining the Union of India from recovering the amounts or rather the difference of amounts between First Class and Second Class fare from the Inspectors. Admittedly, such amounts were paid by the Union of India without any representation or fraud attributable to the Inspectors. Such amounts were paid on the basis of some existing policy. Merely because the policy may have been validly withdrawn at a future date, the Union of India, would not be justified in insisting upon recoveries.

10] In ***State of Punjab and ors. vs. Rafiq Masih (White Washer) and ors. - (2015) 4 SCC 334,*** the

Hon'ble Supreme Court, after taking into consideration several decisions on the subject, including *V.Gangaram (supra)*, has, by way of illustration, indicated certain circumstances, in which, recoveries by employers would be impermissible in law. They are set out in paragraph 18 and read as under:

“18. 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 summarise 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 or recover.”

11] In the present case, there is absolutely no dispute that the so called excess payments came to be made without there being any fraud or misrepresentation attributable to the Inspectors. Ms Masurkar has accepted that these Inspectors were in fact Class-III or Group 'C' employees. The record also indicates that it is only when the Inspectors were actually accompanied with treasury wagons that they were paid this First Class fares and not otherwise. Therefore, it would be iniquitous or harsh to permit any recoveries. In such circumstances, the CAT, has quite correctly, restrained the Union of India from effecting such recoveries and there is no good ground to interfere with the view taken by the CAT.

12] Accordingly, both the petitions are liable to be dismissed and are hereby dismissed. Rule, in each petition is discharged. There shall however, be no order as to costs.

13] Civil Application No. 2191 of 2004 in Writ Petition No. 7160 of 2004 does not survive and the same is disposed of accordingly.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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by Dinesh
Sadanand Sherla
Date: 2018.07.23
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D.S.Sherla