IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10797 OF 2014

M.P. Sreedharan ...Petitioner
Versus
Union of India and ors. ...Respondents

Mr. A.S. Rao for the Petitioner.
Mr. T.J. Pandian for the Respondents.

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

DATE : 03.07.2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 25.08.2014 made by the Central Administrative Tribunal, Mumbai dismissing O.A. No. 361 of 2012 instituted by the petitioner seeking basically for a restraint upon the respondents from recovering benefits of third financial upgradation granted to the petitioner between the year 2009 -2012.

4] There is no dispute that the petitioner was entitled to and has been awarded the benefits under the Modified Assured Career Progression Scheme (MACPS) from the year 2012. The petitioner had however, been awarded such benefits from the year 2009 itself, but subsequently, the respondents, by various orders which were impugned by the petitioner by filing O.A. No. 361 of 2012, sought to withdraw this benefit by contending that such benefit was not due to the petitioner from the year 2009, but was due only from the year 2012. The petitioner was, therefore, constrained to institute O.A. No. 361 of 2012, which has since been dismissed by the Central Administrative Tribunal vide judgment and order dated 25.08.2014. Hence, the present petition.

5] Mr. A.S. Rao, learned counsel for the petitioner, submits that the benefits under the MACPS had been rightly granted to the petitioner from the year 2009 itself. He submits that the orders discontinuing the grant of such benefits could have no retrospective effect. He submits that in any case such benefits were not availed by the petitioner by practising any fraud or misrepresentation. Therefore, he submits that directions for recovery of the so called excess amount is clearly in excess of jurisdiction. He submits that there was an interim relief in operation throughout and therefore, no recoveries have carried out till date. He submits that the petitioner has already retired from the service and this is therefore, not a fit case to permit the respondents to recover any alleged excess payments. He submits that the orders made by the respondents were in fact in violation of principles of natural justice and fair play and therefore, were nullities. He submits that the Central Administrative Tribunal, erred in relying upon the principle in ***Chandi Prasad Uniyal vs. State of Uttarakhand – (2012) 8 SCC 892,*** when in fact the said ruling, has already been clarified and harmonised in case of ***State of Punjab and ors. vs. Rafiq Masih (White Washer) and ors. – (2015) 4 SCC 334.*** For all the aforesaid reasons, Mr. Rao submits that the impugned judgment and order is liable to be set aside and the reliefs applied for by the petitioner in the Original Application be made absolute.

6] Mr. T.J. Pandian, learned counsel for the respondents-Union of India, submits that the benefit of 3rd financial upgradation was availed by the petitioner mistakenly. He points out that the petitioner made a representation and in pursuance of such representation that such benefit was granted to the petitioner. Therefore, he submits that such benefit was availed by the petitioner by misrepresenting the facts. Mr. Pandian, therefore, submits that the principle in *Rafiq Masih (supra),* will clearly not apply and there is no good ground to interfere with the impugned judgment and order made by the Central Administrative Tribunal.

7] The rival contentions now fall for our consideration.

8] In this matter, there is really not necessary to go into the issue as to whether the third financial benefits under the MACPS had been wrongly awarded to the petitioner. This is because even assuming that the petitioner was not entitled to such benefit in the year 2009, but was entitled to such benefit only in the year 2012, from the record, it is quite clear that this is not a case where the petitioner can be said to have availed such benefits on basis of any misrepresentation or fraud. At no stage, was any such allegation ever made by the respondents nor is there any material on record to suggest any misrepresentation or fraud on the part of the petitioner.

9] Merely, because the petitioner may have made a representation for grant of such benefit does not lead to inference that the petitioner has played any fraud or misrepresented any facts. There was not a single fact, which could said to have been misrepresented by the petitioner. The petitioner on the basis of existing executive instructions dealing with the issue of MACPS represented to the appropriate authorities for grant of such benefits from the year 2009. The representation found favour with the respondents and therefore, the respondents awarded such benefit to the petitioner from the year 2009 itself. Merely, because the respondents, at a later point of time realised that such benefit was payable to the petitioner from the year 2012 and not the year 2009, it cannot be said that the respondents have some unqualified right to recover so called alleged excess payments and that too, without even minimum compliance with principles of natural justice and fair play. The issue as to whether the benefit was mistakenly availed by the petitioner from the year 2009 is also, an issue which is quite debatable. However, even if it is assumed that there was some mistake involved in the matter, that by itself, is not sufficient to order recoveries and that too, without minimum compliance with the principles of natural justice and fair play.

10] The Central Administrative Tribunal has almost entirely relied upon the ruling of the Hon'ble Supreme Court in *Chandi Prasad Uniyal (supra)*. This is because the later ruling of the Hon'ble Supreme Court in *Rafiq Masih (supra),* which was delivered on 18.12.2014 was not available at that time.

11] In *Rafiq Masih (supra),* the Hon'ble Supreme Court, at paragraph 18, has laid down the following principles :

> *"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."

12] As noted earlier, this is clearly not a case that the petitioner was beneficiary of any alleged excess benefit on account of any fraud or misrepresentation practised by him. The issue as to whether the petitioner mistakenly availed the benefit in the year 2009 when in fact such benefits were due in the year 2012 itself is a debatable issue. The petitioner has already retired from the service. All this while, there was interim relief in operation restraining recovery. There is material on record that the Railways had in fact adopted the very same interpretation, on basis of which, the petitioner was granted the benefit in the year 2009, in another unit of the Railways. All these factors make it harsh and inequitable to permit any recoveries in the present matter.

13] For all the aforesaid reasons, we set aside the impugned judgment and order dated 25.08.2014 and restrain the respondents from recovering any alleged excess benefits availed by the petitioner between the year 2009 and 2012.

14] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**

Dinesh Sadanand Sherla

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