HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.2006 of 2018

ORAL ORDER: (Per Suresh Kumar Kait, J)

Vide the present petition, petitioner-Union of India has assailed order dated 19.04.2017 passed in O.A.No.233 of 2016 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

The respondent herein retired on superannuation as Supervisor on 31.01.2007. After his retirement, proceedings dated 21.01.2014 were issued reducing his pension from Rs.10,850/- to Rs.10,720/- from 01.02.2007. Recovery of Rs.22,868/- was also ordered vide proceedings dated 21.10.2014 in respect of the excess payment made to him. The respondent challenged the aforesaid proceedings, stating that the said proceedings are issued in violation of principles of natural justice and against the dictum laid down by the Hon'ble Supreme Court in ***State of Punjab & ors. v. Rafiq Masih***[1].

The case of the petitioners herein is that after implementation of 6th CPC, pay of Supervisor has been placed in P.B-2 – Rs.9,300 – Rs.34,800/- with grade pay of Rs.4,800/-. Accordingly, the pay of the respondent herein was fixed in RPS at Rs.16,300/- with grade pay of Rs.4,800/-. However, while calculating pension, grade pay was erroneously taken as Rs.5,400/- due to clerical mistake. Accordingly, pension of the respondent was fixed at Rs.10,850/- during December, 2008, whereas his pension should have been fixed at Rs.10,550/-. Thus, excess amount of Rs.300/- per month was paid to the respondent with effect from 01.02.2007.

In the case of *Rafiq Masih* (supra), the Hon'ble Supreme Court has held as under:

"It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have

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[1] ***[2015 (1) LLJ 455]***

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:

(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.

(iii) Recovery from 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."

The learned Tribunal has relied upon the aforesaid judgment of the Supreme Court and allowed the O.A., filed by the respondent herein, by recording that the respondent herein is admittedly a retired employee and the petitioners herein have resorted to the action of recovery from his pension which has been held to be impermissible. Keeping in view the judgment referred above, we find no illegality or perversity in the order dated 19.04.2017 passed in O.A.No.233 of 2016 by the learned Tribunal.

Petition is accordingly dismissed.

As a sequel, miscellaneous petitions if any pending in the petition stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

January 25, 2018
MRR