THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.16969 OF 2014

ORDER
(*per* Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.1066 of 2011 on the file of the Central Administrative Tribunal, Hyderabad Bench, which was dismissed *vide* order dated 29.04.2014. His prayer therein was to declare as illegal the Memo dated 14.10.2010 issued by the Administrative Officer (Admn.), Sardar Vallabhbhai Patel National Police Academy, Hyderabad (*hereinafter*, 'the Academy'), informing him that overpayment to the extent of Rs.2,93,875/- had been made to him and that it would be recovered from his salary @ Rs.5,000/- per month with effect from October, 2010. Further, he assailed the Memo dated 15.07.2011 of the Administrative Officer of the Academy informing him that an amount of Rs.1,00,000/-, out of the total recoverable amount of Rs.2,93,875/-, would be recovered from his salary @ Rs.5,000/- per month and the remaining amount of Rs.1,93,875/- would be adjusted against his death-cum-retirement gratuity at the time of his retirement. He also assailed the subsequent Memo dated 23.09.2011 of the Administrative Officer of the Academy informing him that waiving of the overpayment was not possible as per the rules. He sought a consequential direction to the authorities to waive the recovery and to refund the amount already recovered with interest.

The order under challenge reflects that the Tribunal took note of the decision of the Supreme Court in CHANDI PRASAD UNIYAL V/s.

STATE OF UTTARAKHAND[1] and applying the *ratio* laid down therein, the Tribunal held that the case of the petitioner-applicant did not fall in the exceptional categories delineated by the Supreme Court. In consequence, the Tribunal found no merit in the O.A. and dismissed it.

Heard Sri J.M.Naidu, learned counsel for the petitioner-applicant, and the learned Assistant Solicitor General for India appearing for the Union of India and the Academy.

The petitioner-applicant was appointed as a Lower Division Clerk in the Academy under Ex-Service Men quota on 27.11.1991. He was promoted as an Upper Division Clerk on 25.11.2003. Prior to his entry into the service of the Academy, he worked in the Indian Air Force from August, 1971 to August, 1986.

The reply-affidavit filed by the Academy before the Tribunal demonstrates that the initial fixation of pay of the petitioner-applicant, who was appointed on re-employment basis, was made in terms of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. The Academy however claimed that while re-fixing and revising his pay, a mistake was committed. The erroneous pay fixation due to non-furnishing of the pension details in time by the petitioner-applicant was stated to have been further compounded by grant of subsequent annual increments and revision of his pay on implementation of the Sixth Central Pay Commission's recommendations. It was only on verification of his Service Book by an audit party that it came to light that his pay had been wrongly fixed. The AG Audit therefore instructed preparation of the due-drawn statement and, in the event any overpayment was made, directed that the same should be recovered. It was upon this exercise that

[1] (2012) 8 SCC 417

the Academy determined that a sum of Rs.2,93,875/- was paid in excess to the petitioner-applicant. As the petitioner-applicant was due to retire from service on 30.06.2012, it was decided to recover the excess amount @ Rs.5,000/- per month from his salary till his retirement and the remaining amount of Rs.1,93,875/- from his death-cum-retirement gratuity, so as to avoid causing him any financial hardship.

As already noted *supra*, the Tribunal merely followed the decision of the Supreme Court in CHANDI PRASAD UNIYAL[1] and extracted as many as ten paragraphs therefrom. Apart from that, there was no independent discussion or application of mind by the Tribunal.

Sri J.M.Naidu, learned counsel, would inform this Court that the issue as to recoveries of excess amounts paid to employees fell for consideration before the Supreme Court in STATE OF PUNJAB V/s. RAFIQ MASIH (WHITE WASHER)[2]. In the first instance, the said case was referred to a Bench of three learned Judges of the Supreme Court to resolve the perceived difference of opinion in SHYAM BABU VERMA V/s. UNION OF INDIA[3] and SAHIB RAM VERMA V/s. STATE OF HARYANA[4], on the one hand, and CHANDI PRASAD UNIYAL[1], on the other. However, the three Judge Bench opined in STATE OF PUNJAB V/s. RAFIQ MASIH (WHITE WASHER)[5] that there was no such conflict, in fact, and that was how the matter was decided by a Bench of two learned Judges of the Supreme Court. Having considered the gamut of issues arising in the context of such recoveries, the Supreme Court, in RAFIQ MASIH (WHITE WASHER)[2], finally observed that it would not be possible to postulate all situations of hardship which would govern the

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[2] (2015) 4 SCC 434
[3] (1994) 2 SCC 521
[4] (1995) Supp. (1) SCC 18
[5] (2014) 8 SCC 883

issue of recovery where payments have mistakenly been made by the employers in excess of the entitlement of employees. Having stated so, based on the decisions referred to therein, the Supreme Court summarized the following 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.'

In the case on hand, it is not in dispute that upon re-employment, the petitioner-applicant was appointed as a Lower Division Clerk and was thereafter promoted to the post of Upper Division Clerk. He seems to have retired from service in that post. The learned Assistant Solicitor General does not dispute the fact that the post of Upper Division Clerk would be categorized as a Class-III Post in the service of the Academy and would stand covered by clause (i) above. Further, it is an admitted fact that the petitioner-applicant attained the age of superannuation on 30.06.2012. Therefore, no recovery could have been effected from him within one year prior to the date of his retirement in terms of clause (ii) of RAFIQ MASIH[2], set out *supra*. Be it noted that though the Academy initiated the recovery proceedings in the year 2010, it worked out the actual modalities of the recovery to be made in July, 2011, i.e., within the one year period preceding his retirement from service. Therefore, as the case of the petitioner-applicant stood covered by these two factors, which were recognized by the Supreme Court as situations where recovery would be impermissible in law, the recoveries made from the petitioner-applicant, be it from his salary or his death-cum-retirement gratuity, cannot be sustained.

The learned Assistant Solicitor General raised a feeble plea that as RAFIQ MASIH[2] was a decision delivered in December, 2014, it should be held to have prospective only. This contention is mentioned only to be rejected. When the Supreme Court lays down the law, unless the decision itself makes it clear that it would apply prospectively, it would mean that the law as laid down therein would be applicable generally. The decision rendered in RAFIQ MASIH[2] was upon consideration of various earlier decisions and merely clarified the legal position by summarizing some of the situations where recoveries would be impermissible in law. In terms of the law laid down in RAFIQ MASIH[2], the recoveries made from the petitioner-applicant are clearly unsustainable in law.

The writ petition is accordingly allowed, setting aside the impugned Memos and also the order of the Tribunal in O.A.No.1066 of 2011. The respondents are directed to refund the amounts recovered from the petitioner-applicant within four weeks from the date of receipt of a copy of this order. Failure to do so would entitle the petitioner-claimant to interest thereon @ 9% per annum from the date of expiry of the time stipulated upto the date of actual payment. This interest amount shall thereafter be realized from the officer responsible for the delay by following the due procedure. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

20th APRIL, 2018
PGS