

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

WRIT APPEAL No.1542 OF 2018

JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

The Central Warehousing Corporation, New Delhi, and its Regional Manager at Hyderabad filed this appeal aggrieved by the order dated 18.04.2018 passed by a learned Judge of this Court allowing W.P.No.35963 of 2015. The said writ petition was filed by the respondents herein assailing the action of the Central Warehousing Corporation in extending to them the Office Order dated 28.05.2014 and proposing to recover the amounts allegedly paid in excess to them while in service.

It is an admitted fact that the respondents retired from the service of the Corporation upon attaining the age of superannuation as long back as in the year 2013. It was only thereafter that the Office Order dated 28.05.2014 was passed taking note of the fact in the process of transition from one pattern of pay scales to another, certain excess payments were made to Executives who had thereafter resigned or retired from the service of the Corporation and deciding that such excess payments should be adjusted against any payments which might become due to such Executives.

Be it noted that the aforestated Office Order dated 28.05.2014 was not directed against any named Executives and, more particularly, the respondents herein. It was general in nature. However, as it was sought to be extended to them whereby the Corporation proposed to make recoveries, the respondents filed the subject writ petition. Relying upon the decision of the Supreme Court in State of Punjab v. Rafiq Masih

(White Washer)¹, the learned Judge allowed the writ petition and set aside the Office Order dated 28.05.2014.

Para 18 of the judgment in Rafiq Masih (White Washer)¹ clearly states to the effect that no recovery can be effected by the employer from a retired employee. In that view of the matter, as the respondents were clearly beyond the reach of the Corporation for making recoveries as they had already retired from the service in the year 2013, the opinion expressed by the learned Judge that the Corporation could not make any such recoveries from them warrants no interference.

However, as rightly pointed out by Sri A.K.Jayaprakash Rao, learned counsel for the appellants, the learned Judge ought to have been mindful of the fact that the Office Order dated 28.05.2014 was not directed against the respondents alone but was general in nature. The learned Judge therefore ought not to have set aside the said order in its entirety.

The writ appeal is accordingly disposed of making it clear that the Office Order dated 28.05.2014 issued by the Central Warehousing Corporation is set aside in so far as it is sought to be extended to the respondents herein for the purpose of making recoveries from them.

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

Date: 28.11.2018
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¹ (2015) 4 SCC 334