

* HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

+ W.P. No. 23624 of 2018

%13.07.2018

Union of India rep. by the Chairman
Ministry of Railways and four others .. Petitioners

Vs.

\$ B. Janaki Rama Rao .. Respondent

! Counsel for the Petitioners: Sri C.V. Rajeeva Reddy
Counsel for Respondent :

<Gist :

>Head Note:

? Cases referred:

- 1) (2014) 8 Supreme Court Cases 883
- 2) (2015) 4 SCC 334



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W.P. No. 23624 of 2018

ORDER:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed challenging the order dated 04.12.2017 in O.A.No. 020/ 00116/ 2015 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, whereby the application filed by the respondent, has been partly allowed.

The learned counsel for the petitioners submits that the impugned order is contrary to the judgment of the Supreme Court in the case of State of Punjab and Others v. Rafiq Masih (White Washer)¹. Thus, the judgment relied upon by the learned Tribunal in the case of State of Punjab and Others v. Rafiq Masih (White Washer) & Others² has no application to the facts of the case on hand.

We note that in the judgment (1st cited supra), a reference was made to the Full Bench in view of the decision taken on the one hand in *Shyam Babu Verma* case [(1994) 2 SCC 52] and *Sahib Ram* case [1995 Supp (1) SCC 18] and on the other hand, in *Chandi Prasad Uniyal* case [(2012) 8 SCC 417]. Accordingly, the Full Bench of the Supreme Court held that even if, by mistake of the employer, the amount is paid

¹ (2014) 8 Supreme Court Cases 883

² (2015) 4 SCC 334

to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered. Therefore, the law laid down in *Chandi Prasad Uniyal* case, in no way conflicts with the observations made by the Supreme Court in the other two cases. It is further held that in those decisions, directions were issued in exercise of the powers of the Supreme Court under Article 142 of the Constitution, but in the subsequent decision, the Supreme Court, under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. Thus, this reference was unnecessary. Therefore, without answering the reference, the matter was sent back to Regular Benches for their appropriate disposal.

We note that in the very same case relied upon by the Tribunal, the Supreme Court has laid down the guidelines as under:

“It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, were 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, summarize 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 case 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."

Admittedly, the respondent belongs to Class III / IV service and has already retired from service and recovery has been effected after three years of retirement, which is against the above-mentioned guidelines (i) and (ii) as laid down by the Supreme Court.

Thus, we find no illegality or perversity in the order passed by the Tribunal which has relied on the judgment of the Supreme Court (2nd cited supra) wherein appropriate guidelines have been framed under which the case of the respondent falls.

Hence, the writ petition is devoid of merit and the same is accordingly, dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

11.07.2018

ABHINAND KUMAR SHAVILI, J

Note:- L.R. Copy to be marked
b/o bcj