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

WRIT PETITION No.11138 OF 2015

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

The Union of India, along with the Director General, Indian Council of Agricultural Research, New Delhi, and the Project Directorate on Poultry, Hyderabad, filed this writ petition aggrieved by the order dated 26.11.2014 passed by the Central Administrative Tribunal, Hyderabad Bench (*hereinafter*, 'the Tribunal'), in O.A.No.610 of 2012. The said O.A. was filed by the first respondent herein assailing the letter dated 27.05.2013 of the Project Directorate on Poultry, Hyderabad, stating that the recovery made from her, based on the C&AG observations, appeared to be in order and that there was no rule to waive such recovery so as to refund the amount after retirement, and informing that her request for waiver of recovery and for refund of her pay and allowances was rejected. She sought a consequential direction to the authorities to refund to her the recovered amount of Rs.1,85,491/- along with interest. By the order under challenge, the Tribunal took note of the observations made by the Supreme Court in CHANDI PRASAD UNIYAL V/s. STATE OF UTTARAKHAND[1]. Reference was made therein by the Supreme Court to its earlier decision in SYED ABDUL QADIR V/s. STATE OF BIHAR[2] holding to the effect that where persons from whom such recovery was sought to be made had already retired or were on the verge of retirement, no recovery should be made of payments made to them in excess. On facts, the Tribunal found that the first respondent-applicant had already

[1] (2012) 8 SCC 417 = AIR 2012 SC 2951
[2] (2009) 3 SCC 475

retired from service and the authorities issued the recovery order belatedly, after ten years. The Tribunal therefore opined that the recovery of Rs.1,85,491/- from her terminal benefits caused her extreme hardship and quashed the impugned letter dated 27.05.2013. The authorities were directed to refund the recovered amount of Rs.1,85,491/- to the first respondent-applicant within a time frame. Aggrieved by this direction, the authorities are before this Court.

By order dated 17.04.2015, this Court granted interim stay of operation of the order under challenge. WVMP No.3550 of 2015 was filed by the first respondent-applicant to vacate the said order. Arguments having been advanced by both sides covering the gamut of the issues arising, the writ petition is amenable to final disposal at this stage.

The first respondent-applicant joined service in the year 1986 as a Stenographer in the Indian Institute of Spice Research at Calicut in the State of Kerala. She was transferred on a request and posted at National Academy of Agricultural Research Management, Hyderabad (NAARM). She was promoted as a Junior Accounts Officer upon passing the requisite departmental examination. She was deputed to the Directorate of Rice Research as a Junior Accounts Officer from 20.11.1992 to 09.01.1995. Again, from 10.01.1995 to 30.04.1995, she worked at the NAARM. She was sent on deputation in May, 1995 to the Project Directorate on Poultry, Hyderabad. She was regularized in service there on 04.06.1997 and was promoted as an Assistant Finance and Accounts Officer thereafter. At that stage, the Indian Council of Agricultural Research, New Delhi, cancelled the order whereby her past services from 01.05.1995 to 01.09.1996 were regularized, without putting her on notice. Aggrieved thereby, she filed O.A.No.90 of 2001 before the Tribunal. The said O.A. was allowed, directing the authorities to put her on notice and thereafter pass appropriate orders in accordance with law. After following this procedure, the authorities again reverted her to the post of Junior Accounts Officer from the post of Assistant Finance and Accounts officer. Challenging this reversion, she filed O.A.No.774 of 2001 before the Tribunal which was dismissed *vide* order dated 25.09.2001. After dismissal of the O.A., she made a representation to the authorities stating that as she had actually worked in the promotional post on deputation, the salary paid to her may not be recovered. No action was taken by the authorities for recovery of the salary but just before the retirement of the first respondent-applicant on 30.04.2010, the recoveries were effected. Aggrieved thereby, she approached the Tribunal again by way of the subject O.A.

The authorities contested her claim by stating that the deputation service rendered by her during 1992-95, which was regularized, was not in accordance with norms and therefore, her promotion as an Assistant Finance and Accounts Officer at Project Directorate on Poultry was also irregular. They pointed out that by order dated 24.02.1998, the Indian Council of Agricultural Research, New Delhi, had clarified that *ad hoc* service and deputation service could not be counted towards eligibility for promotion and therefore, the promotion of the first respondent-applicant as an Assistant Finance and Accounts Officer at the Project Directorate on Poultry, Hyderabad, from 21.03.1998 was erroneous. They also pointed out that the order reverting her was subjected to challenge before the Tribunal *vide* O.A.No.774 of 2001 which was dismissed. They therefore claimed that she could not protest against the recoveries of the excess payments made to her by virtue of the erroneous regularization of service and promotion. They accordingly sought to justify the recoveries made.

Upon considering the rival submissions and the material placed on record, the Tribunal opined that there was no mistake committed by the first respondent-applicant in the context of the excess payments made to her, as she had never misrepresented the facts or played any fraud in relation to fixation of her pay. The mistake in this regard was attributable only to the authorities concerned. The Tribunal further found that there was a delay of more than ten years in effecting recoveries, even after the order of reversion. It was in this context that the Tribunal made reference to the observations of the Supreme Court in CHANDI PRASAD UNIYAL[1] and ultimately granted relief to the first respondent-applicant.

Smt. C.Vani Reddy, learned counsel for the petitioners, would contend that the Tribunal failed to take note of the correct legal position as laid down by the Supreme Court. She would point out that in CHANDI PRASAD UNIYAL[1], the Supreme Court expressed concern as to the excess payments of public money, often described as 'taxpayers money', which belongs neither to the officers who effected the overpayment nor to the recipients. She would further point out that the Supreme Court stated that it did not understand why the concept of fraud or misrepresentation is being brought into such situations and any amount paid/received without the authority of law can always be recovered, barring few exceptions of extreme hardship but not as a matter of right.

She however does not dispute the fact that the Supreme Court, in para 15, stated that it was of the considered view that except for the few instances pointed out in SYED ABDUL QADIR[2] and COL.B.J.AKKARA V/s. GOVERNMENT OF INDIA[3], excess payments made due to wrong/ irregular pay fixation can always be recovered.

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[3] (2006) 11 SCC 709

It may be noted that SYED ABDUL QADIR[2] was a case where excess amounts were paid to teachers and ultimately, the Supreme Court held that no recoveries could be made from them as a majority of the teachers had either retired or were on the verge of it. In COL.B.J.AKKARA[3], the Supreme Court observed that where a Government servant, particularly one in the lower rungs of service, is paid excess amounts for a long period, he would spend it, genuinely believing that he is entitled to it, and recovery of such excess amounts subsequently would cause undue hardship to him and therefore, relief requires to be granted in that behalf. It was further observed that it is only where the employee had knowledge that the payment received was in excess of what was due or where the error is detected or corrected within a short time, Courts would not grant relief against recovery.

Smt.C.Vani Reddy, learned counsel, would also place reliance on the observations made by the Bench of three learned Judges of the Supreme Court in STATE OF PUNJAB V/s. RAFIQ MASIH (WHITE WASHER)[4]. Therein, the Bench considered the perceived conflict of views between SHYAM BABU VERMA V/s. UNION OF INDIA[5] and SAHIB RAM V/s. STATE OF HARYANA[6], on the one hand, and CHANDI PRASAD UNIYAL[1], on the other. She would point out that it was held therein that the law laid down in CHANDI PRASAD UNIYAL[1] did not conflict with the observations made in the other two cases and the Supreme Court observed that the directions in the other two cases were issued in exercise of power under Article 142 of the Constitution, whereas the decision in CHANDI PRASAD UNIYAL[1] was under Article 136 of the Constitution. She would therefore assert that the broader principle laid

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[4] (2014) 8 SCC 883
[5] (1994) 2 SCC 521
[6] (1995) Supp. (1) SCC 18

down in CHANDI PRASAD UNIYAL[1] must prevail and that recovery of excess amounts from the first respondent-applicant must be held to be justified.

This argument however loses sight of the fact that after the decision in RAFIQ MASIH (WHITE WASHER)[4], the matter was placed before a Bench of two learned Judges of the Supreme Court resulting in the decision reported in STATE OF PUNJAB V/s. RAFIQ MASIH (WHITE WASHER)[7]. Therein, the Supreme Court observed that in view of the conclusions laid down by the Three Judge Bench, it would be its endeavour to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. The Supreme Court further observed that, having examined a number of judgments rendered by it earlier, orders passed by the employer for recovery of monetary benefits wrongly extended to the employees can only be interfered with in cases where such recovery would result in hardship of a nature which would far outweigh the equitable balance of the employer's right to recover. In other words, *per* the Supreme Court, interference would be called for only in such cases where it would be iniquitous to recover the payment made. The Supreme Court opined that in order to ascertain the parameters of the above consideration and the test to be applied, reference needed to be made to situations when the Supreme Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution. Reference was thereafter made to SYED ABDUL QADIR[2] which finds mention in CHANDI PRASAD UNIYAL[1] and the Supreme Court observed that first and

[7] (2015) 4 SCC 334

foremost, it is pertinent to note that it was recognized therein that the issue of recovery revolved on the action being iniquitous and if the payment has been made for a long duration of time, it would be iniquitous to make any recovery. Reference was also made to the decisions in SHYAM BABU VERMA[5], B.J.AKKARA[3] and SAHIB RAM[6]. Upon a conspectus of all the decisions referred to, the Supreme Court summarized the following situations wherein recoveries by 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).
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> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
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> (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.
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> (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.
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> (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 light of this recent authoritative pronouncement by the Supreme Court, it is not open to the petitioners to seek to justify the delay on their part in effecting recovery of the excess amounts from the first respondent-applicant and resorting to such a measure just prior to her retirement from service in April, 2010. It may be noted that the actual recovery was effected only at the stage of her retirement. The case of the first respondent-applicant therefore falls squarely within Clause (ii) set out *supra* in RAFIQ MASIH (WHITE WASHER)[7]. Further, even going by the observations made in para 15 of CHANDI PRASAD UNIYAL[1], relying on SYED ABDUL QADIR[2], we find no merit in the contention of Smt. C.Vani Reddy, learned counsel, that there is scope for drawing a distinction based on the decisions of the Supreme Court referred to *supra* and that the case of the first respondent-applicant can be dealt with differently.

The writ petition is therefore devoid of merit and is accordingly dismissed. Interim order dated 17.04.2015 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

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M.GANGA RAO,J

25th APRIL, 2018
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