

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT PETITION NOS. 27152, 32357, 41146, 41213, 41584,
42200, 42209, 42212, 42217 AND 42258 OF 2018

W.P.No.27152 of 2018:

Between:

Union of India rep. by the General Manager,
South Central Railway, and others .. Petitioners

And

M.Satyanarayana .. Respondent

Date of Judgment Pronouncement: 13th DECEMBER, 2018

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

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

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< Gist:

> Head Note:

! Counsel for petitioners : Sri C.V.Rajeeva Reddy

! Counsel for respondents-
applicants in W.P.Nos.27152,
41146, 41213, 41584, 42200,
42209, 42212, 42217 and
42258 of 2018 : Sri M.Bhaskar

! Counsel for 1st respondent in
W.P.No.32357 of 2018 : Sri Taddi Nageswara Rao

? CASES REFERRED:

1. (2015) 4 SCC 334
2. (1994) 2 SCC 521
3. 1995 Supp (1) SCC 18
4. (2006) 11 SCC 709
5. (2009) 3 SCC 475
6. (2012) 8 SCC 417 = AIR 2012 SC 2951
7. (2014) 8 SCC 883

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

WRIT PETITION NOS.27152, 32357, 41146, 41213, 41584,
42200, 42209, 42212, 42217 AND 42258 OF 2018

COMMON ORDER
(*Per Sri Justice Sanjay Kumar*)

The Union of India and its officials in the South Central Railway (SCR)/East Coast Railway (ECR) filed this batch of writ petitions aggrieved by the independent orders passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (*for brevity*, 'the Tribunal'), granting relief to the applicants therein. Perusal of the orders under challenge demonstrates that the Tribunal uniformly applied the law laid down by the Supreme Court in *STATE OF PUNJAB V/ s. RAFIQ MASIH (WHITE WASHER)*¹ to the effect that recoveries of excess payments could not be made from retired employees. The writ petitions therefore turn upon the same issue and are amenable to disposal by way of this common order.

W.P.No.27152 of 2018:

This writ petition arises out of the order dated 21.03.2018 passed by the Tribunal in O.A.No.021/533/2017. The said O.A. was filed by the respondent herein assailing the letter dated 12.09.2016 whereby recovery of the excess payments made to him was sought to be effected. The respondent-applicant entered the service of the SCR as a Telecom Maintainer Grade-III in September, 1980. Upon due promotions, he became a Senior Technician, a Group "C" post, in July, 2007. While working as such, he applied for and got selected for deputation to Rail Tel Corporation of India Limited (RCIL) in September, 2008. He remained on such deputation up to June, 2013. He became a permanent employee of

¹ (2015) 4 SCC 334

RCIL in June, 2013, having tendered his technical resignation to the SCR on 11.06.2013. Upon his resignation, he was granted pension by the SCR for the service rendered to it. However, the Senior Divisional Finance Manager, SCR, Vijayawada Division, addressed the letter dated 12.09.2016 to the respondent-applicant informing him that he had wrongly been paid dearness relief on his pension and the excess payment of Rs.4,03,350/- was directed to be remitted in relation to the period 12.06.2013 to 31.07.2016. This was the cause for the filing of the O.A.

W.P.No.41146 of 2018:

This writ petition arises out of the order dated 20.07.2018 passed by the Tribunal in O.A.No.020/543/2017. The said O.A. was filed by the respondent herein assailing the letter dated 15.06.2017 of the Senior Divisional Finance Manager, SCR, Vijayawada Division, seeking to recover the excess pension amount paid to him to the tune of Rs.4,84,202/- from 01.06.2007 to 30.06.2017 on the ground that he had been wrongly extended the benefit of dearness relief. The respondent was a Senior Catering Inspector in the SCR and was deputed to work in the Indian Railway Catering and Tourism Corporation (IRCTC) in 2004/2005. He was permanently absorbed in the service of the IRCTC with effect from 01.01.2007 after he tendered his technical resignation to the SCR. SCR thereupon started paying him pension.

W.P.No.41213 of 2018:

This writ petition arises out of the order dated 20.07.2018 passed by the Tribunal in O.A.No.020/539/2017. The said O.A. was filed by the respondent herein assailing the letter dated 15.06.2017 of the Senior Divisional Finance Manager, SCR, Vijayawada Division, seeking to recover a sum of Rs.4,98,222/- towards the excess pension amount paid to him

from 01.01.2007 to 30.06.2017 on the ground that he was wrongly extended the benefit of dearness relief. The respondent was a Senior Catering Inspector in the SCR and was deputed to IRCTC in 2004/2005. He was permanently absorbed in the service of IRCTC with effect from 01.01.2007 after he tendered his technical resignation to the SCR. SCR thereupon started paying him pension.

W.P.No.41584 of 2018:

This writ petition arises out of the order dated 20.07.2018 passed by the Tribunal in O.A.No.020/540/2017. The said O.A. was filed by the respondent herein assailing the letter dated 15.06.2017 issued by the Senior Divisional Finance Manager, SCR, Vijayawada Division, seeking to recover a sum of Rs.5,50,242/- on the ground that excess pension had been paid to him from 01.01.2007 to 30.06.2017 by wrongly extending to him the benefit of dearness relief. The respondent was a Senior Catering Inspector in the SCR and was deputed to IRCTC. He was absorbed in IRCTC with effect from 01.01.2007 after he tendered his technical resignation to the SCR. He was thereupon paid pension by the SCR for the services rendered to it.

W.P.No.42200 of 2018:

This writ petition arises out of the order dated 04.10.2018 passed by the Tribunal in O.A.No.021/00584/2017. The said O.A. was filed by the respondent herein assailing the letters dated 07.09.2016 and 12.09.2016 of the Senior Divisional Finance Manager, SCR, Vijayawada Division, seeking to recover Rs.7,25,306/- from him on the ground that excess pension had been paid to him from 02.03.2007 to 31.07.2016 by wrongly extending to him the benefit of dearness relief. The respondent entered the service of the SCR in 1983. He was deputed to RCIL in March, 2002

and was absorbed in its service in 2008, whereupon SCR started paying him pension for the service rendered to it. He was admittedly a Group 'C' employee in the service of the SCR.

W.P.No.42209 of 2018:

This writ petition arises out of the order dated 27.09.2018 passed by the Tribunal in O.A.No.587 of 2017. The said O.A. was filed by the respondent herein assailing the recovery sought to be effected of the excess pension paid to him, by way of the letters dated 07.09.2016 and 12.09.2016 of the Senior Divisional Finance Manager, SCR, Vijayawada Division. The excess amount sought to be recovered was Rs.5,24,049/- and the reason for such recovery was that dearness relief had been extended to him wrongly on the pension amount paid to him. The respondent-applicant while working as an Officer in Grade-I Scale in the SCR was deputed to the RCIL. He tendered his technical resignation to the SCR on 01.10.2010 and was permanently absorbed in the service of the RCIL from the said date. The recovery is with regard to the excess pension amount allegedly paid to him from 01.10.2010 to 31.07.2015.

W.P.No.42212 of 2018:

This writ petition arises out of the common order dated 03.10.2018 passed by the Tribunal in so far as it pertains to O.A.No.020/00671/2017. The said O.A. was filed by the respondent herein aggrieved by the letter dated 10.07.2017 of the Senior Divisional Finance Manager, SCR, Vijayawada Division, whereby he sought to recover a sum of Rs.5,69,838/- from him on the ground that excess pension had been paid to him from 01.01.2007 to 30.06.2017 by wrongly extending to him the benefit of dearness relief. The respondent was a Senior Catering Inspector in the SCR when he was deputed to (IRCTC). He was

permanently absorbed in its service with effect from 01.01.2007 after he tendered a technical resignation to the SCR on 31.12.2006. He was thereupon paid pension by the SCR for the services rendered by him.

W.P.No.42217 of 2018:

This writ petition arises out of the common order dated 03.10.2018 passed by the Tribunal in so far as it relates to O.A.No.020/00672/2017. The said O.A. was filed by the respondent herein assailing the letter dated 10.07.2017 of the Senior Divisional Finance Manager, SCR, Vijayawada Division, seeking to recover a sum of Rs.5,36,869/- from him on the ground that excess pension had been paid to him from 01.08.2007 to 30.06.2017 by wrongly extending to him the benefit of dearness relief. The respondent was an Assistant Catering Inspector in the SCR and was sent on deputation to IRCTC in January, 2004. He was absorbed permanently in the service of IRCTC with effect from 01.08.2007 after he tendered his technical resignation to the SCR on 31.07.2007. SCR thereupon started paying him pension.

W.P.No.42258 of 2018:

This writ petition arises out of the order dated 28.09.2018 passed by the Tribunal in O.A.No.020/00670/2017. The said O.A. was filed by the respondent herein assailing the letter dated 10.07.2017 of the Senior Divisional Finance Manager, SCR, Vijayawada Division, whereby he sought to recover a sum of Rs.5,09,537/- from him on the ground that he had been paid excess pension from 01.08.2007 to 30.06.2017 by wrongly extending to him the benefit of dearness relief. The respondent was an Assistant Catering Inspector in the SCR and was sent on deputation to the IRCTC in February, 2005. He was absorbed in its service with effect from

01.08.2007 after he tendered his technical resignation to the SCR. SCR thereupon started paying him pension.

W.P.No.32357 of 2018:

This writ petition stands on a slightly different footing and it arises out of the order dated 05.02.2018 passed by the Tribunal in O.A.No.494 of 2017. The said O.A. was filed by the first respondent herein, the widow of a Passenger Guard (Guard 'A') in the ECR who retired from its service on 31.07.1983 upon attaining the age of superannuation. She filed the O.A. aggrieved by the order dated 12.05.2017 of the Assistant Divisional Finance Manager-I, ECR, Visakhapatnam Division, rejecting her appeal and informing her that the fixation of her husband's pension was incorrect. She also assailed the earlier proceedings dated 13.02.2017 of the Assistant General Manager, State Bank of India, Hyderabad, informing her that excess pension had been paid to her husband during the period 01.01.2006 to 03.01.2011 to the tune of Rs.2,61,189/- and excess family pension had been paid to her with effect from 04.01.2011 to the tune of Rs.5,28,453/- and that the said excess pension payment, aggregating to Rs.7,89,642/-, would be recovered in 203 monthly installments @ Rs.3,900/- per month with effect from 01.02.2017 to 31.12.2033.

It is an admitted fact that the husband of the first respondent retired from the service of the ECR on 31.07.1983 in the pay scale of Rs.425-600. The designation of Guard 'A' was changed to Passenger Guard with a pay scale of Rs.1350-2200 and Rs.5000-8000 in the Fourth and Fifth Pay Commission Pay Scales respectively. The excess amounts now sought to be recovered are attributable to the revision of the pension in terms of the revised pay scales. Obviously, the first respondent and her husband had nothing to do with such erroneous fixation and the mistakes

committed in this exercise are wholly attributable to the officials of the ECR themselves.

Sri C.V.Rajeeva Reddy, learned counsel for the petitioners, would however contend that the Tribunal erred in blindly applying RAFIQ MASIH¹ to the cases on hand without taking note of the Office Memorandum dated 02.07.1999 issued by the Department of Pension & Pensioners Welfare, Ministry of Personnel, Public Grievances & Pensions, Government of India. He would point out that in terms of the said Office Memorandum, in the cases of re-employed pensioners, no dearness relief was admissible on their pension during the period of their re-employment and payment of dearness relief in such cases would become admissible only with effect from the date they ceased to be re-employed. He would further point out that in terms of the aforestated instructions, the Railway Board, Ministry of Railways, directed all General Managers of Zonal Railways to conduct a thorough check to detect cases where dearness relief was being paid even upon re-employment in Railway Public Sector Undertakings and to initiate necessary recovery from the defaulting retired railway pensioners besides taking further necessary action as per rules. He would further point out that in terms of Rule 15 of the Railway Services (Pension) Rules, 1993 (*for brevity*, 'the Rules of 1993'), recovery could be made from the pensionary benefits of the railway employees concerned. He would stress upon Rule 15(3)(b) of the Rules of 1993 in particular and contend that excess pension payments would constitute 'railway dues'.

Rule 15 of the Rules of 1993 reads as under:

'15. Recovery and adjustment of Government or railway dues from pensionary benefits- (1) For the dues other than the dues pertaining to occupation of Government or Railway accommodation, the Head of Office shall take steps to assess the dues "one year" before the date on which a railway servant is due to retire on superannuation.

(1A) The assessment of Government or Railway dues in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of retirement of the railway servant.

(Authority: File No.2015/F(E)III/1(1)/4 dt.17.06.16 – RB NO.70/2016)

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression “railway or Government dues” includes-

(a) dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the permissible period after the date of retirement of allottee),. if any;

(Authority : Railway Board letter No.F(E)III/2010/PN1/4 dated 28.03.12)

(b) dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, losses (including short collection in freight charges shortage in stores) caused to the Government or the railway as a result if negligence or fraud on the part of the railway servant while he was in service.'

Sri C.V.Rajeeva Reddy, learned counsel, would emphasize upon the fact that Rule 15(3)(b) of the Rules of 1993 includes ‘overpayments’ made to the employees concerned and assert that the Tribunal ought to have been mindful of the statutory rule position which authorized recovery of the excess pension payments made to the applicants in the O.As. Learned counsel would further contend that the law laid down by the two Judge Bench in RAFIQ MASI^H did not take into consideration the earlier decisions rendered by Larger Benches and cannot be held to lay down good law.

Sri M.Bhaskar, learned counsel appearing for the respondents-applicants in all the cases, except W.P.No.32357 of 2018, and Sri Taddi

Nageswara Rao, learned counsel for the first respondent-applicant in W.P.No.32357 of 2018, would however contend that Rule 15(3)(b) of the Rules of 1993 has no application to the cases on hand as recoveries are sought to be made of excess pension amounts and not of overpayment of pay and allowances or leave salary. They would further contend that the ratio laid down in RAFIQ MASI H¹ squarely applied to the cases on hand and that the Tribunal rightly followed the same.

We find that Rule 15(1) of the Rules of 1993 itself makes it clear that the dues from the railway servant should be assessed one year before his date of retirement upon attaining the age of superannuation. Rule 15(1A) of the Rules of 1993 states that the assessment of the railway dues in terms of Rule 15(1) should be completed by the Head of the Office eight months prior to the date of retirement of the railway servant. Rule 15(2) of the Rules of 1993 states that the railway dues which remain outstanding till the date of retirement shall be adjusted against the amount of the retirement gratuity/death gratuity/terminal gratuity. It is in the context of these sub-rules that Rule 15(3)(b) of the Rules of 1993 has to be understood and interpreted. Rule 15(3) of the Rules of 1993 defines 'railway or Government dues' for the purposes of Rule 15 and Rule 15(3)(b) of the Rules of 1993 elaborates that such railway dues would also include overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia. It is therefore clear that payment of excess pension, by no stretch of imagination, can be brought within the ambit of 'railway dues' in terms of Rule 15 of the Rules of 1993. Further, as already pointed out, ascertainment of the railway dues in terms of the aforestated rule necessarily has to be made before the retirement of the railway servant, which clearly demonstrates that it

can have no application to the dues allegedly arising out of excess pension payments after the retirement of the railway servants. It is not in dispute that the respondents-applicants who were re-employed, either in the IRCTC or the RCIL, first retired from the service of the SCR, thereby becoming eligible for pension payment by the SCR. They were therefore beyond the reach of this rule after their retirement. The contention of the learned counsel that Rule 15 of the Rules of 1993 would have application to the cases on hand is therefore rejected.

As regards the other argument of Sri C.V.Rajeeva Reddy, learned counsel, it may be noted that the Ministry's Office Memorandum sought to be relied upon by him was issued as long back as on 02.07.1999. It was therefore for the authorities concerned to be mindful of the fact that in the cases of re-employed pensioners, no dearness relief should be admitted on the pension paid to them during the period of their re-employment. Admittedly, in all these cases, except in W.P.No.32357 of 2018, the railway servants retired from the service of the SCR long thereafter and were re-employed in the IRCTC or the RCIL, public sector undertakings under the Railways, and were therefore eligible to be paid pension. The instructions put in place by the Office Memorandum dated 02.07.1999 were thus well established by the time they were extended the benefit of pension after their re-employment.

Further, Sri C.V.Rajeeva Reddy, learned counsel, fairly concedes that no action whatsoever has been initiated against the officials of the SCR and the ECR who were responsible and accountable for the excess pension amounts paid to the respondents-applicants. So too is the case with the first respondent in O.A.No.494 of 2017 and her husband. The wrongful fixation of his pension and her family pension was squarely

attributable to the officials of the ECR but no action whatsoever has been initiated against those guilty of such negligence. This being the situation, the Office Memorandum dated 02.07.1999 cannot be pressed into service by Sri C.V.Rajeeva Reddy, learned counsel, to justify the recoveries now sought to be made years after the commencement of payment of pension.

Coming to the next contention of Sri C.V.Rajeeva Reddy, learned counsel, with regard to case law, it may be noted that in SHYAM BABU VERMA V/ s. UNION OF INDIA², a three Judge Bench of the Supreme Court having observed that the petitioners therein were not entitled to certain pay scales, but were wrongly extended the same, held that as they had received such benefit due to no fault of theirs, it would be just and proper not to recover any excess amount which was already paid to them. The Supreme Court accordingly directed that no steps should be taken to recover or adjust any excess amount paid to the petitioners due to the fault of the respondents, they being in no way responsible for the same.

In SAHIB RAM V/ s. STATE OF HARYANA³, a two Judge Bench of the Supreme Court held that the appellant therein did not possess the required qualification and therefore, the Principal of the Government College erred in granting him relaxation and upgrading his pay scale. However, taking note of the fact that it was not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal, for which he could not be held to be at fault, the Supreme Court directed that the amounts paid till date should not be recovered from him.

In COL.B.J.AKKARA V/ s. GOVERNMENT OF INDIA⁴, a two Judge Bench of the Supreme Court observed that where a Government

² (1994) 2 SCC 521

³ 1995 Supp (1) SCC 18

⁴ (2006) 11 SCC 709

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 required 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.

In SYED ABDUL QADIR V/ s. STATE OF BIHAR⁵, a three Judge Bench of the Supreme Court directed that no recovery should be made, taking note of the fact that the persons from whom recovery of excess payment was sought to be made had already retired or were on the verge of retirement. This 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. The observations of the Supreme Court in this regard are apposite of extraction and are as under:

‘The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

.....

....Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they

⁵ (2009) 3 SCC 475

were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made'

In CHANDI PRASAD UNIYAL V/s. STATE OF UTTARAKHAND⁶, a two Judge Bench of the Supreme Court expressed concern as to excess payments of public money, often described as 'tax-payers money', which belonged neither to the officers who effected the overpayment nor to the recipients. 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. The Supreme Court however stated that it was of the considered view that except for the few instances pointed out in SYED ABDUL QADIR⁵ and COL.B.J.AKKARA⁴, excess payments made due to wrong/irregular pay fixation can always be recovered.

A Bench of three learned Judges of the Supreme Court in STATE OF PUNJAB V/ s. RAFIQ MASI H (WHITE WASHER)⁷ considered the perceived conflict of views between SHYAM BABU VERMA² and SAHIB RAM³, on the one hand, and CHANDI PRASAD UNIYAL⁶, on the other.

⁶ (2012) 8 SCC 417 = AIR 2012 SC 2951

⁷ (2014) 8 SCC 883

They however held that the law laid down in CHANDI PRASAD UNIYAL⁶ did not conflict with the observations made in the other two cases as 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 UNIYAL⁶ was under Article 136 of the Constitution. The three Judge Bench therefore found the reference to be unnecessary and without answering it, the three Judge Bench sent back the matter to a two Judge Bench for appropriate disposal. Thereupon, the matter was placed before a Bench of two learned Judges of the Supreme Court, resulting in the decision reported in RAFIQ MASIH¹. Therein, the two Judge Bench of the Supreme Court observed that in view of the conclusions drawn 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 QADIR⁵,

which finds mention in CHANDI PRASAD UNIYAL⁶, and the Supreme Court observed that first and 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 had 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 VERMA², COL.B.J.AKKARA⁴ and SAHIB RAM³. 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).
- (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 light of this authoritative pronouncement by the Supreme Court, it is not open to the petitioners to resort to recovering the excess pension amount paid by them to the retired respondents-applicants over a long period of time on the ground that they had been wrongly extended dearness relief. Similarly, it is also not open to the petitioners to seek to recover the excess amounts paid, be it towards service pension or family pension, owing to the wrong fixation by the authorities themselves, from

the railway servant's widow, the first respondent in W.P.No.32357 of 2018.

Be it noted, at the cost of repetition, that in so far as the SCR was concerned, the re-employed respondents-applicants attained the status of retirement from its service long back and therefore, the recoveries sought to be made from such 'retired employees' more than five years later clearly fall foul of Clause (ii) set out in *RAFI Q MASI H¹ supra*.

That apart, it is not disputed by Sri C.V.Rajeeva Reddy, learned counsel, that most of the respondents-applicants belong to Group 'C' service or Group 'D' service and they satisfy Clause (i) of *RAFI Q MASI H¹* also and therefore, recoveries from them is impermissible. Further, as the excess pension amounts have been paid to all the respondents-applicants for over a decade in most of these cases and, in any event, for more than five years, Clause (iii) of *RAFI Q MASI H¹*, set out *supra*, is also attracted.

Thus, three of the situations recognized by the Supreme Court, as ones where recoveries by employers would be impermissible in law, are squarely made out presently as the cases on hand unmistakably fall within Clauses (i), (ii) and (iii), set out *supra*, in *RAFI Q MASI H¹*.

Further, going by the observations made in *CHANDI PRASAD UNIYAL⁶*, relying on *SYED ABDUL QADIR⁵* and *COL.B.J.AKKARA⁴*, we find no merit in the contention of Sri C.V.Rajeeva Reddy, learned counsel, that there is any scope for drawing a distinction between *RAFI Q MASI H¹* and the earlier decisions of the Supreme Court, referred to *supra*, whereby the cases of the respondents-applicants can be dealt with differently.

On the above analysis, this Court finds that the contentions urged by Sri C.V.Rajeeva Reddy, learned counsel, are devoid of merit. The

orders passed by the Tribunal do not warrant interference either on facts or in law and are therefore confirmed.

The writ petitions fail and are accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

13th DECEMBER, 2018

Note: L.R.Copy to be marked.

(B/O) PGS

