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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1199/2018 & CM Nos.4989-90/2018

MAHANAGAR TELEPHONE NIGAM LIMITED Petitioner

Through: Mr.Saket Sikri, Advocate with
Mr.Ajay Pal Singh & Ms.Niyati
Patwardhan, Advocates

versus

SH. SATNAM SINGH AND ANR.

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

09.02.2018

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1. The petitioner/MTNL is aggrieved by the judgment dated 17.08.2017 passed by the Tribunal in O.A.No.2080/2016, filed by respondents No.1 and 2, ex-employees of the MTNL, who had retired on the post of Telecom Technical Assistant, on attaining the age of superannuation on 31.12.2012 & 30.04.2013, after rendering 37 years and 38 years of service, respectively.

2. The respondents had approached the Tribunal praying *inter alia* for quashing and setting aside orders dated 26.06.2013 and 19.10.2013 passed by the petitioner/MTNL seeking to effect recoveries from them for a sum of `1,76,252/-(qua the respondent No.1) and ` 1,06,969/-(qua the respondent No.2). Further, they had claimed interest @ 12% on the amount illegally withheld by the

petitioner/MTNL.

3. The brief undisputed facts of the case are that after the respondents No.1 and 2 had superannuated from the petitioner's organisation on 31.12.2012 and 30.04.2013, respectively, vide communication dated 26.06.2013, the petitioner/MTNL informed the respondent No.1 that a sum of `1,76,252/- had to be recovered from the gratuity payable to him on account of overpayment of pay and allowances. A similar communication dated 19.10.2013 was issued by the petitioner/MTNL to the respondent No.2, informing him that a sum of `1,06,969/- had to be recovered from him due to overpayment. The respondents have averred in their O.A. that in response to the information sought by them under the RTI Act, 2005 vide letters dated 02.08.2014 ad 12.11.2014, they were informed that the recoveries made from their gratuity were shown in their last payment certificates, which was as per the pay fixed in their service books. Further, on rechecking their service books at the time of their retirement, the petitioner/MTNL noticed that overpayment had been made to them.

4. The petitioner/MTNL had furnished the following information to the respondent No.1 vide letter dated 23.07.2014:-

"The payment of MTNL Gratuity was calculated and paid to Shri Satnam Singh TA-0365 as per Last Pay Certificate received from AO(P&A) East. The recovery of Rs.1,76,252/- was made as shown in the LPC which was found correctly made as per pay fixed in the service book of the official. The payment to the other officials were

also made correctly as per their pay fixed at the service book and LPC received."

5. Similarly, vide reply dated 7.11.2014 the petitioner/MTNL had given the following information to the respondent No.2:-

"4) Service book has to be re-checked at the time of retirement before releasing pensioner benefits. In this case while rechecking service book of Sh.Baljeet Singh, Ex.TTA, it was noticed that increment allowed/given after pay fixation of dated 01.12.1998 was wrong which was simultaneously corrected. An overpayment of Rs.1,06,969/- was calculated and recovered from gratuity after obtaining consent of Sh.Baljeet Singh, Ex.TTA (Copy enclosed), retired on 30.04.2013.

5) xxx xxx

6) There is no question of refund of overpayment. Sh.Baljeet Singh did not object on letter No.AO(P&A)/GM(West)/BS/Vr23/2013-14, dated 12.08.2013 issued to inform him regarding reduction of pay being fixed wrong inadvertently and overpayment of Rs.106969/-. Moreover it is correct and as per rule."

6. After receiving the said information, the respondents filed the aforesaid OA which has been allowed by the Tribunal on the principles laid down by the Supreme Court in State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors., reported as **2015 (4) SCC 334**. The observations of the Tribunal while following the aforesaid judgment, are re-produced herein below:

"8. After giving my thoughtful consideration to this matter, I am of the clear view that the instant case is squarely covered by the ratio laid down by the Apex Court in **Rafiq Masih's case (supra)**. Even otherwise, no justification has been offered by the respondents as to why and under what circumstances they decided to rectify the mistake by showing it in the LPC in case of applicant No.1 and by re-fixing the pay in case of applicant No.2 after a gap of several years. While the respondents have not revealed in their replies through RTI when the LPC was corrected in case of applicant No.1, they have admitted that in case of applicant No.2 the mistake of wrong fixation was committed way back in 1998. Therefore, in both the cases, the respondents have taken inordinately long time in rectifying these mistakes and, therefore, to do so at the time of retirement and to recover substantial amount at the time of retirement does not seem to be proper and sustainable in the eyes of law. I am of the very clear view that recoveries effected from the applicants' retiral dues are not in accordance with law laid down by the Apex Court in **Rafiq Masih's case (supra)** and, therefore, the OA succeeds on this ground."

7. In view of the observations made above, the Tribunal directed the petitioner/MTNL to refund the amounts recovered from the respondents, within three months. Later on, the petitioner/MTNL filed R.A. No.239/2017 before the Tribunal, seeking review of the order dated 17.11.2017 that was dismissed vide order dated 22.11.2017. Aggrieved by the aforesaid orders dated 17.11.2017 and 22.11.2017, the petitioner/MTNL has filed the present petition.

8. Twin arguments have been advanced by Mr.Sikri, learned

counsel for the petitioner, to assail the impugned judgment, one is with regard to the delay of three years on the part of the respondents in approaching the Tribunal for relief and the other is with regard to non-application of the judgment of Rafiq Masih (supra) to the case in hand on the ground that the deductions were made from respondents No.1 and 2 in the year 2013 which was prior to the pronouncement of the said judgment.

9. Coming to the first objection with regard to the limitation raised by learned counsel for the petitioner, we may refer to the judgment in the case of Union of India & Ors. vs. Tarsem Singh, reported as (2008) 8 SCC 648 where the Supreme Court has elucidated the principles underlying continuing wrongs and recurring/successive wrongs, as applicable to service law disputes, in the following words:

*"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. **If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does***

not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition." (emphasis added).

10. As can be seen from the observations of the Supreme Court extracted hereinabove, a belated service related claim will be rejected on the ground of delay and laches except where a case relates to a continuing wrong or if the issue relates to payment or re-fixation of pay or pension etc. In such cases, relief can be granted inspite of delay as it does not affect the rights of a third party. In the present case, there is no quarrel on the fact position that the petitioner/MTNL had sought to make deductions from the retiral benefits of the respondents and the same does not have an adverse effect on any third party for MTNL to invoke the doctrine of delay and laches. This being the position, we do not find any error on the part of the Tribunal in entertaining the petition filed by the respondents for recovery of the amounts deducted by the petitioner/MTNL from their retiral dues.

11. Coming to the second plea taken by learned counsel for the petitioner/MTNL that the judgment in the case of Rafiq Masih (supra) having been delivered only on 18.12.2014, it would not apply to the facts of this case where deductions were made by the petitioner/MTNL in June-October, 2013 and once the said amounts had been deducted, the issue had attained finality. In the case of Rafiq

Masih (supra) the legal position with regard to the circumstances where recoveries made by the employers would be impermissible in law, was summarised in para 18, as below:-

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few 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."

12. It is apparent from the above that in the fact situation before us, the petitioner/MTNL had made recoveries from the respondents as per

a situation contemplated in para 18 (ii) of the captioned decision which refers to recoveries from retired employees or those who are due to retire within one year, from the date of the order of recovery and para 18(iii) which contemplates a situation where excess payment has been made for a period in excess of five years, before the order of recovery was issued.

13. In the present case, it is the stand of the petitioner/MTNL that pay fixation of both the respondents was wrongly done way back in the year 1998 which allegedly came to light only when they had retired. It is clear that recoveries have been made by the petitioner/MTNL from the respondents after they had retired and that too in respect of amounts allegedly overpaid to them right from the year 1998 onwards. Thus, both the situations postulated in para 18(ii) & (iii) of the captioned decision squarely apply to the respondents herein.

14. Learned counsel for the petitioner/MTNL submits that since recoveries have been made from the respondents in the year 2013, the law as expounded by the Supreme Court in the case Chandi Prakash Uniyal & Ors. vs. State of Uttarakhand & Ors., reported as **(2012) 8 SCC 417**, would apply. Having perused the said judgment, we find that the same is of no assistance to the petitioner/MTNL. Rather, the said decision favours the respondents. We may usefully reproduce paras 11 and 12 of the said decision, as below:-

*"11. We may in this respect refer to the judgment of two-Judge Bench of this Court in **Col. B.J. Akkara (retd.) case** (supra) where this Court after referring to **Shyam***

Babu Verma case, Sahib Ram case (supra) and few other decisions held as follows:

'28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.'

12. Later, a three-Judge Bench in Syed Abdul Qadir case (supra) after referring to Shyam Babu Verma, Col. B.J. Akkara (retd.) etc. restrained the department from recovery of excess amount paid, but held as follows:

'59. 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

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."

(Emphasis added)

15. Even in the case of Chandi Prakash Uniyal (supra), the Supreme Court had clearly stated in the year 2012, that any amount paid/received without authority of law, cannot be recovered in circumstances explained in Sayed Abdul Qadir vs. State of Bihar reported as (2009) 3 SCC 475 and in Col.B.J.Akkara vs. Govt. of India reported as (2006) 11 SCC 709. Thus even in the year 2012, the position relating to circumstances where recovery of excess payment can be made by an employer from the employee, had been explained. It was only amplified by the Supreme Court later on in Rafiq Masih's case (supra) in the year 2015. We are, therefore, firmly of the opinion

that in the present case, the respondents were in no way responsible for the excess payment released to them by the petitioner/MTNL that had wrongly fixed their pay in their service books, in the year 1998. Admittedly, the respondents had no knowledge that the amount that was being paid to them, was more than what they were actually entitled to, nor had they made any misrepresentation or committed any fraud on the petitioner/MTNL, which had resulted in excess amounts being released to them.

16. Given the aforesaid legal position, we don't find any error in the impugned order passed by the Tribunal that warrants interference. Accordingly, the present petition is dismissed *in limine* being devoid of merits, alongwith the pending applications.

HIMA KOHLI, J.

P.S.TEJI, J.

FEBRUARY 09, 2018

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