

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT PETITION No.2194 of 2019

ORDER: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

We have heard the learned counsel for the petitioners-Railways quite in extenso in this writ petition filed under Article 227 of the Constitution of India challenging the order issued by the Central Administrative Tribunal, Hyderabad Bench (for short, 'the Tribunal'), on an Original Application under the Administrative Tribunals Act, 1985.

2. The respondent retired as a Technician Grade III, which is a Group 'C' post, on voluntary retirement. He was initially appointed as a Khalasi on 30.11.1978. Subsequently, he was promoted to the post of Khalasi Helper in the year 2005 and as Technician Grade III on 19.09.2011. During his service, punishment of compulsory retirement was imposed on him as per the order dated 23/31.03.1989. His appeal against that was accepted and the punishment was modified and he was appointed as a fresh candidate as Khalasi on 04.12.1990. He was granted 3rd financial upgradation under Modified Assured Career Progression Scheme as per order dated 03.10.2013. Thereafter, he availed voluntary retirement from service on 27.01.2017. After the voluntary retirement request was accepted, he was issued the proceedings whereby the Railways reduced his pay from Rs.9150 + 2000 to Rs.8150 + 2000 and without giving any notice, an amount of Rs.1,58,061/- was deducted from the terminal benefits allegedly towards overpayment of pay and allowances. This was challenged by the employee before the Tribunal.

3. The Tribunal noticed the different facts and factors as are relevant and applied the ratio of the binding judicial precedent of the Hon'ble Supreme Court in ***State of Punjab and others v. Rafiq Masih (White***

Washer) and others¹, wherein their Lordships have elaborately classified the categories and decided on fundamental principles of law as to situations where different modalities could be adopted. Paragraph 18 of that judgment unequivocally states, among other things, that recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service) would be impermissible in law. Applying the ratio decidendi of that precedent and the law laid down by their Lordships through that decision, the Tribunal was justified in concluding that the respondent was entitled to the relief sought for.

4. We, therefore, do not find any infirmity in law or jurisdiction warranting exercise of authority under Article 227 of the Constitution of India and thereby interfering with the decision of the Tribunal at the instance of the Railways.

5. Be that as it may, we accede to the request of the learned counsel for the Railways that the time limit for compliance of the order of the Tribunal may be extended by two months.

6. Having bestowed our anxious consideration to that request, we enlarge the time for complying with the order of the Tribunal for a period of six (6) weeks from today.

7. The Writ Petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Date: 06.02.2019

Note: Issue CC at the earliest

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¹ (2015) 4 Supreme Court Cases 334