

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

WRIT PETITION No.5951 of 2019

ORDER: *(per the Hon'ble Sri Justice A. Rajasheker Reddy)*

This Writ Petition is filed against the order dated 28.09.2018 wherein and whereby the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, allowed O.A.No.265 of 2017 filed by respondent herein, by issuing a direction to petitioners herein to consider release of amount withheld from his gratuity within two months from the date of receipt of a copy thereof.

2. Learned Assistant Solicitor General appearing for petitioners submits that respondent is not entitled for Transport Allowance since he was in the non-functional scale and he claimed Transport Allowance, for which he is not entitled to, as such, petitioners rightly ordered for recovery of amount from respondent in terms of the Rules; that Tribunal without deciding entitlement of respondent regarding Transport Allowance, erroneously issued a direction to petitioners for payment of amount withheld from gratuity to respondent; that respondent gave an undertaking that he would pay back excess amount in case of wrong fixation of pay, but, Tribunal by placing reliance upon judgment of Apex Court in **the State of Punjab v. Rafiq**

Masih (White Washer) & Others¹, passed order impugned and said judgment is distinguished by Apex Court in **High Court of Punjab & Haryana v. Jagdev Singh²**.

3. It is to be seen that issue in the present case is whether petitioners are entitled to recover Transport Allowance from respondent. In impugned order, Tribunal observed that respondent has neither misrepresented nor misguided petitioners for release of Transport Allowance as was paid by them and that respondents cannot recover Transport Allowance in terms of the guidelines laid down by Apex Court in **Rafiq Masih** (1 supra) and said guidelines read as under:

- 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.

¹ 2015(4) SCC 334

² Civil Appeal No.3500 of 2006

4. From the above, we are of the view that case of respondent comes under Clause v of aforesaid guidelines. Even though respondent gave an undertaking, Tribunal rightly relied on judgment of Apex Court in **Rafiq Masih** (1 supra) and passed order impugned by issuing direction to petitioners to release the amount withheld from gratuity to respondent, as such, we cannot find fault with order impugned. Further, in **Jagdev Singh** (2 supra), Apex Court dealt with the case of pay fixation and held that recovery should be made in reasonable instalments. But, in present case, issue is with regard to grant of Transport Allowance, as such, principle laid down in **Jagdev Singh** (2 supra) has no application to facts in present case.

5. In view of aforesaid facts and circumstances, we are of the view that this is not a case where we can exercise jurisdiction under Article 227 of Constitution of India, as such, we do not interfere with order impugned.

6. Accordingly, this Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

Date: 22.03.2019

A. RAJASHEKER REDDY, J

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