

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.11424 of 2015

ORDER

This Writ Petition is filed seeking the following relief:

“to issue an appropriate writ or direction particularly one in the nature of Writ of Mandamus declaring the impugned action in deducting a sum of Rs.1,94,710/- Rs.45,837/- = Rs.2,40,547/- from the payment of gratuity as well as reducing the basic pay from Rs.14,757/- to Rs.13,275/- without any opportunity, not adding the annual increments which is due as on 01.10.2014 to the basic pay of Rs.14,575/- making the petitioner to retire with retrospective effect from 11.04.2014 through Proceedings No.P1/469(4)/2014-MDK, dated 10.10.2014 as illegal, arbitrary, without jurisdiction, in violation of Articles 14, 21 & 300-A of Constitution of India, in contrary to the provision of Payment of Gratuity Act and consequently the petitioner pray this Hon'ble Court may be pleased to direct the respondents to pay deducted amount of Rs.2,40,567/- and to pay the deference of gratuity, additional monetary benefits and un-availed earned leave salary by adding annual increment due as on 01.10.2014 to the basic pay of Rs.14,575/- as well as interim relief payable from 01.01.2014 in the interest of justice.”

Heard Sri V.Narasimha Goud, learned counsel appearing for the petitioner, and Sri N.Vasudeva Reddy, learned Standing Counsel appearing for the respondent-Corporation.

It is the case of the petitioner that initially, he was appointed as Driver in the respondent-Corporation on 01.02.1988. While so, during August, 1995, the respondents had initiated disciplinary proceedings against him and imposed major penalty of removal *vide* proceedings dated 05.08.1995 on the ground of unauthorized absence from duty. Challenging the same, the petitioner has approached the Labour Court-II, Hyderabad, by filing I.D.No.69 of 1995 under Section 2-A (2) of the Industrial Disputes Act, 1947. The Labour Court *vide* Award dated 29.06.2000 while setting aside the removal order directed the respondents to reinstate the petitioner into service with continuity of service, without back wages, and imposed the punishment of stoppage of one annual increment for a period of two years without cumulative effect.

Learned counsel appearing for the petitioner contended that in pursuance of the Award passed by the Labour Court, the petitioner was reinstated into service on 04.09.2000 and he is discharging his duties to the best satisfaction of his superiors. It is further contended that during February, 2014, the petitioner was sent for medical examination and the Medical Board declared him as unfit for the post of Driver due to his defective eye vision and that the petitioner was allowed

to retire on medical invalidation grounds with effect from 11.04.2014.

The grievance of the petitioner is that at the time of retirement, the respondents have deducted an amount of Rs.1,94,710/- and an amount of Rs.45,837/- totalling to Rs.2,40,547/- from the gratuity on the ground that the respondents have erroneously paid excess gratuity. It is further contended that actually, the petitioner is entitled for total gratuity amount of Rs.3,26,370/-, but the respondents have deducted an amount of Rs.2,40,547/- without there being any proceedings to that effect. After retiring the petitioner on medical invalidation grounds, the respondents ought not to have recovered the gratuity paid to him. In support of his contention, learned counsel placed reliance on the judgment of the Apex Court in *State Punjab and others vs. Rafiq Masih(white washer)*¹, wherein it was held as under.

“(i)Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii)Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii)Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

¹ (2015) 4 Supreme Court Cases 334

(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."

As per the said judgment, the respondents cannot recover any amount from the petitioner after retirement. It is prayed that appropriate orders be passed in the writ petition directing the respondents to refund the amount which was deducted from the gratuity of the petitioner within a reasonable period.

Learned Standing Counsel appearing for the respondents contended that since the respondents have erroneously fixed the gratuity on retirement of the petitioner, he is not entitled for the excess gratuity and that the respondents have rightly deducted the amount from the gratuity of the petitioner.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that the issue involved in this writ petition is squarely covered by the judgment of the Apex Court *State Punjab and others vs. Rafiq Masih (white washer)* (cited supra), whereunder it was

held that recoveries cannot be made by the employer after retirement of the employee. Since the petitioner was allowed to retire on medical invalidation grounds, the respondents ought not to have recovered the amount of Rs.2,40,547-.

Therefore, the Writ Petition is allowed. The respondents are directed to refund the amount of Rs.2,40,547/- to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. However, the petitioner is at liberty to submit a representation in respect of increments and other benefits to which he is entitled to, as per law. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Date: 10.12.2019

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