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

+ **Date of Decision: 15.02.2019**

% **W.P.(C) 1558/2019**

MAHANAGAR TELEPHONE NIGAM LTD. Petitioner

Through: Mr. Suhail Dutt, Sr. Adv. with Mr.
Mohd. Faizal, Advs.

versus

SHRI RAMDHAN GUPTA AND ANR. Respondent

Through: Mr. Rajesh Gogna, CGSC with Mr.
Upendra Sai, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

CAV No. 153/2019

1. The caveat has been listed. However, none appears for respondent No.1 – Caveator. The caveat stands disposed of.

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2. The MTNL has preferred the present writ petition to assail the order dated 06.09.2018 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 551/2017, whereby the Tribunal has allowed the Original Application preferred by respondent No. 1 and set aside the letter dated 26.12.2014 issued by the petitioner rejecting the respondent's representation. The Tribunal has directed the petitioner to pay to the respondent No.1, the amount of Rs. 1,97,253/- within 90 days of

receipt of the copy of the order.

3. The respondent was serving as Sub Divisional Engineer (SDE) in MTNL from where he superannuated on 31.12.2014. Four days before his superannuation, a letter was issued which he received on 29.12.2014 from the DGM (Cash & Tax) MTNL, informing him regarding deduction of Rs. 1,97,253/- which had been overpaid to him on account of inadvertent grant of two annual increments way back on 14.06.1995 i.e. nearly 20 years ago. This was followed by the aforesaid deduction from the payment of leave encashment due to the respondent upon his retirement on 31.12.2014.

4. The respondent No.1 represented against the said deduction and his representation was rejected on 04.04.2015. The respondent then further represented and within one year of the first rejection, came the second rejection on 17.03.2016. The respondent No.1 then preferred the Original Application, sometime in February, 2017, to assail the said deduction from his retiral dues by placing reliance on the judgment of the Supreme Court in *State of Punjab and Others v. Rafiq Masih (White Washer)*, (2015) 4SCC 334, (hereinafter referred as *Rafiq Masih 2*).

5. The Tribunal invoked the principles laid down in the said decision and allowed the claim.

6. Mr. Dutt, learned senior counsel for the petitioner states that the respondent was not a Class III or Class IV employee. He received retiral dues to the tune of Rs. 32 lakhs and, therefore, the deduction of Rs. 1,97,253/- was not so grave as to cause undue hardship to him. He had no legal right to retain the said amount as it was inadvertently paid to him. He,

therefore, submits that the decision in *Rafiq Masih 2* could not be invoked in this case. He further submits that in *State of Punjab and Others v. Rafiq Masih (White Washer)*, (2014) 8 SCC 883, (hereinafter referred as *Rafiq Masih 1*), the three-judge – Bench to which the matter was referred to resolve an apparent conflict between *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521, and *Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18, on one hand, and *Chandi Prasad Uniyal V. State of Uttarakhand*, (2012) 8 SCC 417, on the other hand, observed that the orders issued in *Shyam Babu Verma* (supra) were in exercise of the powers of the Supreme Court under Article 142 of the Constitution of India. He submits that, on the other hand, the judgment in *Chandi Prasad Uniyal* (supra) was a judgment rendered in exercise of the power of the Supreme Court under Article 136 of the Constitution of India. Thus, according to Mr. Dutt, it is the judgment in *Chandi Prasad Uniyal* (supra) which forms the binding precedent. He submits that only the Supreme Court could pass an order – by resort to Article 142 of the Constitution, to deny the right of the employer to recover the amounts paid erroneously, which the employee has no legal right to retain or appropriate.

7. Mr. Dutt further submits that the Original Application was barred by limitation and even, though the said objection was raised by the petitioner before the Tribunal, the Tribunal has not examined the same.

8. Having heard learned senior counsel for the petitioner and examined the record, we find no merit in this petition. So far as the aspect of limitation is concerned, it is noticed that the first rejection of the respondent's representation came on 04.04.2015. Thus, the respondent

could have waited till the last day of the year before approaching the Tribunal. The respondent made further representations on 21.04.2015 and 06.11.2015 within the period of limitation. He was not expected, as a prudent person to jump to the Tribunal straight away. Within the said period of one year of the issuance of the first impugned communication dated 26.12.2014, the petitioner issued the second communication on 17.03.2016, rejecting his aforesaid two representations.

9. The Original Application was preferred within one year of the issuance of the communication dated 17.03.2016 by the petitioner. In our view, the issuance of the said second communication dated 17.03.2016 during the currency of the limitation period had the effect of extending period of limitation. Thus, we find no merit in the submission of Mr. Dutt that the Original Application was barred by limitation.

10. The submission of Mr. Dutt premised on *Rafiq Masih 1*, in our view, cannot be accepted since, while deciding *Rafiq Masih 2*, the Bench had the benefit of the decision in *Rafiq Masih 1*. The Supreme Court rendered its decision in *Rafiq Masih 2* in the light of *Rafiq Masih 1*. In *Rafiq Masih 2*, the Supreme Court observed that 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. As a ready reference, the Supreme Court summarized a few situations, wherein recoveries by the employer would be impermissible in law. The situations wherein recovery would be impermissible were stated as follows:

“(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.

(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.”
(emphasis supplied)

11. From the above, it would be seen that so far as employee belonging to Class III and Class IV services (or Group C and D services), are concerned, recovery was declared to be impermissible in all situations, where excess payment had been made to them mistakenly by the employer, for which they were not responsible in any way. The categories (ii) to (v), above, however, are not restricted to employees belonging to Class III and Class IV, or Group C and Group D services.

12. Thus, the submission of Mr. Dutt that recovery from respondent No.1 could be affected since he was not a Class III or Class IV employee, has no merit. His case squarely falls in Clauses (ii) and (iii) aforesaid, since the recovery was made on the retirement of respondent No.1, and it related to a period well in excess of five years.

13. We, therefore, find no merit in this petition.

14. Dismissed.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

FEBRUARY 15, 2019

N.Khanna

