20/11/2020
Item No.13
AB/S DE

Through Video Conference

W. P. C. T. 50 of 2020

Union of India & Others

-Vs-

Sushanta Kumar Jana

Mr. Sovan Mukherjee ...for the Petitioner.

We have heard learned Counsel for the Union of India appearing in support of this application under Articles 226/227 of the Constitution of India.

The Union of India through the railways concerned challenged the order of the Central Administrative Tribunal.

The respondent superannuated from service on 30.06.2013 as Head Commercial Clerk (Goods) of Southeastern Railways at Kharagpur. Out of the retiral benefits, DCRG amount of Rs.5,04,306/- was left unpaid by the establishment on the premise that he is liable for the debits indicated in debit memo dated 3.2.2014 to the tune of Rs.4,85,066/-. The entire DCRG amount was withheld.

The respondent moved the tribunal. Upon considering the facts and factors, the tribunal concluded that the so-called debits do not fall within the provisions of para 4(ii) of Rule 15 of the Railway Services (Pension) Rules, 1993 and there was no authority in law, even in terms of Rule 9 of the Railway Service (Pension) Rules, to make such deduction from the retiral benefits.

Reference was also made to the judgment of Hon'ble Supreme Court of India in State of Punjab & Others Vs RAFIQ MASIH (WHITE WASHER) & Others [(2015) 4 SCC 334] to the effect that in a similar matter the Supreme Court had decided that such amounts cannot be deducted or withheld. Resultantly, the employer was directed to release the entire withheld amount with 8% interest from the date the amount fell due.

Learned Counsel for the Union of India argued that the deductions were due. However, it has to be noted that the so-called claim or debit amounts are referable to the activities of the railways and liability cannot be fixed without quantification in such proceedings as could be taken even in the form of disciplinary proceedings against such an official.

After retirement, there is no rule authorizing such action to be taken as has been done. No post retirement recovery proceeding, as may be authorized by law, has been initiated. The tribunal was also justified in relying on Rafiq Masih's case to hold that the recovery and withholding of the amount was improper.

While learned Counsel for the Union of India points out that deduction could be effected for recovery of loss caused by negligence etc, we are of the view that such exercise can be carried out only by initiating proceedings to fix liability in such a manner as is provided by law but that nothing having been done and the quantification by the railways being merely in terms of its *ipse dixit* with reference to the employee, there was no ground for the establishment to withhold the amounts.

Considering the impugned order of the tribunal in the light of the submissions and grounds raised, we do not find that there is any illegality, irregularity or impropriety or any count of injustice as against the establishment – Union of India represented by the railways which calls for interference by us in exercise of authority under Article 227 of the Constitution of India. We also do not see any ground to interfere under Article 226 having regard to the jurisdiction that has been exercised.

For the aforesaid reasons, this application fails and the same is, accordingly, dismissed.

(Thottathil B. Radhakrishnan, C.J.)

(Arijit Banerjee, J.)