HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No.7605 of 2019

Date: 12.02.2020

Between:

Union of India,
Rep. by the General Manager,
South Central Railway,
Rail Nilayam, III Floor,
Secunderabad, and others

... Petitioners

and

M.A. Anwar Basha, and another

...Respondents

Counsel for the petitioners : Mr. C.V. Rajeeva Reddy

Counsel for the respondent No.1 : Mr. M. Bhaskar

The Court made the following:

<u>ORDER</u>: ***(per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)***

Aggrieved by the order dated 29.11.2018, passed by the Central Administrative Tribunal, Hyderabad Bench ('the learned Tribunal', for short), whereby the learned Tribunal has allowed the O.A. filed by the respondent-applicant ('the applicant', for short), the present writ petition is filed by the Union of India and others.

Briefly, the facts of the case are that the applicant was working for the South Central Railways. While he was working as Deputy Chief Controller, Hyderabad Division, he was sent on deputation to Centre for Railway Information Systems ('CRIS'). Subsequently, on 03.06.2007, he was absorbed in CRIS. Therefore, he tendered his technical resignation to the South Central Railways. After his retirement, his retirement benefits were arranged and PPO No. 59030107570 was issued by the FA & CAO/SCR/SC, wherein it has clearly indicated the amount of pension payable to him, and the fact that the applicant would be eligible for Dearness Allowance from time to time. After a lapse of nine years, the Divisional Financial Manager, the respondent No. 3 in the O.A., by letter dated 05.12.2016 sought clarification from the CRIS/Delhi, and asked for a certificate calling for details as per Para (II)(a) of Railway Board's letter, dated 05.08.1999. The Manager, Personnel of

CRIS certified that the applicant's pay was not fixed at the minimum of the grade in CRIS. In fact, the applicant was drawing the same pay and scale, which he was drawing at the time of absorption in CRIS. Based on the said letter, the respondent No. 3 issued a letter dated 21.06.2017, to the Chief Manager (Link Branch), Syndicate Bank, Grammer School, Abids, Hyderabad, the applicant's bank, and ordered for recovery of the excess amount paid towards admissible Dearness Allowance paid to the applicant, which was to the tune of Rs.6,44,148/-. Immediately, on 17.07.2017, the applicant submitted a representation to the Additional Divisional Railway Manager, Hyderabad Division, South Central Railway. In the said representation, the applicant has clearly pointed out that the overpayment of Dearness Allowance was not due to any misrepresentation, or fraud played by him. But notwithstanding his representation, the bank authorities have started the recovery at the rate of Rs.7,600/- per month from the applicant's pension amount. Aggrieved by the letter dated 21.06.2017, the applicant filed the O.A. before the learned Tribunal. By order dated 29.11.2018, as mentioned hereinabove, the learned Tribunal has allowed the O.A. Hence, the present writ petition before this Court.

Mr. C.V. Rajeeva Reddy, the learned Standing Counsel appearing for the petitioners, has vehemently contended that the case of the applicant does not fall within the four corners of the **State of Punjab v. Rafiq Masih**[1]. For, the case of **Rafiq Masih** (supra) deals with the Class-IV employees. Therefore, the learned Tribunal has erred in relying on the case of **Rafiq Masih** (supra), and ordered to grant the relief to the applicant.

On the other hand, the learned counsel for the applicant submits that in the case of **Rafiq Masih** (supra), the Hon'ble Supreme Court has prescribed five circumstances, wherein recoveries from the employees were held to be impermissible in law. One of the circumstances so mentioned was recovery from retired employees. Another circumstance that was mentioned was if the Court arrives at a conclusion that if recovery were to be made from an employee, it would be iniquitous, harsh and arbitrary act, which would far outweigh the equitable balance of the employer's right to recover. According to the learned counsel, the applicant's case is covered by both these circumstances. For, by the time the impugned letter was written to the bank officials by the respondent No. 3, the applicant had already retired from service. Moreover, the recovery at the rate of Rs.7,600/- per month from the applicant's pension would lead to grave hardship to the applicant at the dusk of his life. Lastly, the learned counsel has relied on the case of **Union of India v.**

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[1] (2015) 4 SCC 334

M. Satyanarayana (W.P.No.27151 of 2018 and batch) decided by a Division Bench of this Court on 13.12.2018. According to the learned counsel, similar orders were passed by the learned Tribunal as the present impugned order. These orders passed by the learned Tribunal were challenged in a series of writ petitions before this Court. In the case of **M. Satyanarayana** (supra), the Union of India had equally pleaded that the case of the retired employees, from whom recoveries were being made, were not covered by the case of **Rafiq Masih** (supra). However, the learned Division Bench had rejected the said contention, and upheld the similar orders passed by the learned Tribunal as was passed in the present case. Therefore, the present case is squarely covered by the judgment of a learned Division Bench of this Court in the case of **M. Satyanarayana** (supra). Thus, according to the learned counsel, the present writ petition also deserves to be dismissed by this Court.

Heard the learned counsel for the parties, perused the impugned order, and considered the case law cited at the Bar.

In the case of **Rafiq Masih** (supra), the Apex Court has described five circumstances in which the employers are not permitted to make any recoveries from the employees. The five circumstances are 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.

Admittedly, in the present case, the applicant has retired from his service. Therefore, his case would clearly fall within the scope of circumstance No. 2 mentioned hereinabove. Moreover, in case the proposed recovery from the pension amount were to be deducted in future, it will lead to a harsh condition. For, it would be difficult for the applicant to survive financially on the meager pension. Therefore, the learned Tribunal was justified in concluding that the applicant's case is squarely covered by the case of **Rafiq Masih** (supra). Therefore, the contention raised by the learned counsel for the petitioners is clearly unacceptable.

Similar orders, as passed by the learned Tribunal in the present case, were also challenged in the case of **M. Satyanarayana** (supra). A Coordinate Bench of this Court has upheld the similar orders passed by the learned Tribunal in the said case. Hence, the present case is equally covered by the case of **M. Satyanarayana** (supra)**.**

Therefore, for the reasons stated above, this Court does not find any merit in the present writ petition; it is, hereby, dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, pending if any, shall also stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

A. ABHISHEK REDDY, J)

12th February, 2020

Tsr

HCJ & AARJ
W.P.No.7605 of 2019
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(Per Hon'ble the Chief Justice Raghvendra Singh Chauhan)

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