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.7518 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

D. Moses Paul, and two others.

...Respondents

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

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

The Court made the following:

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

Aggrieved by the order dated 22.11.2018, 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 a Deputy Chief Controller, Hyderabad Division, he was sent on deputation to RailTel Corporation of India Limited ('RCIL'). Subsequently, on 05.07.2011, he was absorbed in RCIL. Therefore, he tendered his technical resignation to the South Central Railways. After his retirement, his retirement benefits were arranged and PPO No. 59036108620 was issued by the FA & CAO/SCR/SC, wherein it was 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. As on that date, the Dearness Allowance was 61%. However, after a lapse of more than five years, the Senior Divisional Financial Manager, the respondent No. 4, issued a letter dated 12.10.2016, to the Executive Director, RCIL, requesting to direct the employee to repay the over payment of Dearness

Allowance of Rs.7,40,789/- to the Railways, or necessary recovery may be made from the employee, and remit the said amount to FA & CAO/SC. Immediately, on 04.06.2018 and 05.07.2018, the applicant submitted representations to the respondent No.4, and to the Additional Divisional Railway Manager, Hyderabad Division, South Central Railway, respectively. In both the representations, the applicant clearly pointed out that the overpayment of Dearness Allowance was not due to any misrepresentation, or fraud played by the applicant. He, therefore, requested the respondent No.4 not to recover the said amount. But, notwithstanding with his representations, the bank authorities initiated steps for recovery of Dearness Allowance paid to the applicant from 05.07.2011 and started deducting at the rate of Rs.9,160/- from the applicant's pension from April, 2017. Aggrieved by the letter dated 12.10.2016, the applicant filed the O.A. before the learned Tribunal. By order dated 22.11.2018, 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 of Rs.9,160/- of the pay from April, 2017 from his 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 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 amount. 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 had 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.

Miscellaneous pending applications, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

A. ABHISHEK REDDY, J)

12th February, 2020

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THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No. 7518 OF 2019

(Per Hon'ble the Chief Justice Raghvendra Singh Chauhan)

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