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.26639 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. Murali Krishna, 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)***

The Union of India and others have challenged the legality of the order dated 25.04.2018 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), and set aside the order dated 04.05.2017, wherein recovery of excess payment made to the applicant was directed to be made.

Briefly, the facts of the case are that the applicant, Mr. M. Murali Krishna, was initially appointed on the post of Apprentice Telecom Inspector, Grade-III in Signal and Telecommunication Department of South Central Railway on 25.02.1991. Subsequently, he was promoted on the post of Telecom, Inspector Grade-II. Thereafter, he was promoted to the post of Section Engineer, Telecom. The said post is a Group-C post. While the applicant was working as Telecom Inspector Grade-II, RailTel Corporation of India Limited ('RCIL'), a Public Sector Unit of Railways, issued a notification inviting volunteers from Railways to work in the RCIL on deputation basis. The applicant along with others joined the RCIL on 18.03.2002. He worked with the RCIL till 18.03.2007. During this period of deputation, he worked on the same pay scale as he was drawing in the Railways without any consequential benefits, which were paid to the employees of the RCIL. Since there was an option to continue to work with the RCIL, the applicant applied for absorption with the RCIL. By letter dated 21.02.2007, the RCIL approved the applicant's absorption in the RCIL on permanent basis. Therefore, on 18.03.2007, the applicant submitted a technical resignation to the Railways, and became a permanent employee of the RCIL on 19.03.2007. At the time of being absorbed by the RCIL, the applicant was granted the pension duly fixing the basic and the Dearness Relief. However, to the shock and dismay of the applicant, after his retirement, by letter dated 04.05.2017, the Senior Divisional Finance Manager, the respondent No.5 wrote a letter to the Chief Manager, Syndicate Bank, the applicant's bank, and directed the bank officials to recover the amount of Dearness Relief drawn by the applicant from 19.03.2007 to 04.05.2017, and remit the same to the Railways. For, according to the respondent No.5, an employee who retires and joins the PSUs was not entitled to the Direness Relief on basic pension. Since the applicant was aggrieved by the said letter, challenging the said letter, the applicant filed the O.A. before the learned Tribunal. As stated above, by order dated 25.04.2018, the learned Tribunal allowed the said O.A., and set aside the letter dated 04.05.2017.

Mr. C.V. Rajeeva Reddy, the learned Standing Counsel appearing for the petitioners, has vehemently contended that the applicant had given an undertaking to the Bank Manager, Syndicate Bank that in case any excess amount were to be deposited in his account, he would be willing to refund or make good the said amount. Since the excess amount to a tune of Rs.6,49,000/- was paid to the applicant during the period of 18.03.2007 to June, 2016, he is duty bound to refund the same to the Railways.

On the other hand, the learned counsel for the applicant submits that the plea of the applicant giving an undertaking to the Bank was never raised by the petitioners before the learned Tribunal. Therefore, a new plea based on new facts cannot be permitted to be raised for the first time before the appellate Court.

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

It is now settled principle of law that a new plea based on facts cannot be raised for the first time before the appellate Court. Therefore, the contention raised by the learned counsel for the petitioners with regard to the alleged undertaking given by the applicant is clearly unsustainable.

Further, in the case of **State of Punjab v. Rafiq Masih**[1], the Apex Court has prescribed five circumstances in which the employers are not permitted to make any recoveries from the employees. The five circumstances are as under:-

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[1] (2015) 4 SCC 334

(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 **Union of India v. M. Satyanarayana** (W.P.No.27151 of 2018 and batch). A Coordinate Bench of this Court by order dated 13.12.2018 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.

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

(RAGHVENDRA SINGH CHAUHAN, CJ)

A. ABHISHEK REDDY, J)

12th February, 2020

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AND

THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No. 26639 OF 2019

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

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