06.07.2021
Item no.45
Aloke
Ct. no.16

(Through Video Conference)

WPCT 18 of 2020
Union of India & Ors.
Versus
Subhas Hansda

Mr. Kushi Prasun Chatterjee, Adv.
... For the petitioners

Mr. Debajyoti Basu, Adv.
Mr. Barun Chatterjee, Adv.
... For the respondent

This writ application is directed against the order of the learned Central Administrative Tribunal dated September 25, 2019 in connection with an application filed by the private respondents praying *inter alia* for an order quashing the decision of the present petitioners for recovery from his salary any amount on the ground of over drawn salary over a period of time. In the present writ application in paragraph-4 the petitioners tried to justify recovery of amount paid in excess from his salary between March 1, 2011 and September 3, 2016 on the ground that on account of misinterpretation of Modified Assured Career Progression (MACP) Rules, the 3rd financial upgradation was due to the petitioner on September 3, 2016 but it was extended to the petitioner on March 1, 2011 and accordingly on refixation of grade of pay carried out on May 4, 2017 it was found that the petitioner has received excess payment. This has resulted in the issuance of the order for recovery of salary paid in excess.

The learned counsel for the writ petitioner has relied upon the decision in the case of **Chandi Prasad Uniwal** reported in **2012 AIR SCW 474** for the proposition where the excess payment on account wrong fixation has been made, recovery should be made in all cases of such over payment barring few exception of extreme hardship.

In the instant case, apart from the fact that **State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.** reported in **(2015) 4 SCC 334** has dealt with this matter in *extenso* and it would cause undue hardship to the private respondent in the event such recovery is made at the fag end of his career. In view of the fact that the recovery of such amount paid in excess was not recoverable as it would cause hardship to the private respondent, we feel that the learned Tribunal was justified in relying upon **Rafiq Masih** (supra) and passing consequential direction.

It is not in dispute that the private respondent is not in any manner responsible for the misinterpretation or refixation of the grade of pay in 2011 as a consequence whereof certain financial benefits were extended to the private respondent. Moreover, this was detected at the fag end of the service of the respondent. It would cause undue hardship if recoveries are made from the original applicant on the verge of his retirement. On such consideration, we feel that the learned Tribunal has correctly applied the five conditions as laid down in **Rafiq Masih** (supra) in allowing the original application of the private respondent with the consequential directions in paragraphs 7, 8 and 9 which reads as follows :

> *"7.Having given our anxious consideration on the materials on record, in our considered opinion, since the applicant is a retired employee and had no role to play in securing the MACP benefits ahead of his time, paragraph 2 & 3 of the decision of **Rajiq Masih** would straightway come to his aid and therefore we dispose of the OA with a direction upon the respondent authority to work out and issue an appropriate orders detailing therein the date on which the 2nd MACP and 3rd MACP fell due, refix his pay accordingly, revise his last pay drawn and refix his pension.*
>
> *8. While doing so, respondents shall keep in mind the decision of **Rafiq Masih** and shall refund any amount they have recovered due to alleged over payment made earlier.*
>
> *9. The entire exercise shall be completed within 3 months from the date of receipt of copy of this order."*

With the above observation, the writ petitioner fails and the same is dismissed. There shall be no order as to costs.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.) **(Soumen Sen, J.)**