28-01-2021
ct no. 13
Sl.38
pk/sp

WPA 11077 of 2020
(Through Video Conference)

Md. Piyaru
Versus
State of West Bengal and others

Mr. Joy Chakraborty,
Mr. Dip Jyoti Chakraborty
...for the petitioner

Mr. Ayan Banerjee,
Ms. Debasree Dhamali
... for the SBSTC.

The petitioner was a Group C employee of the South Bengal State Transport Corporation. In the year 2017 pursuant to scheme floated by the employer the petitioner opted for V. R. S. and his application was accepted.

80 per cent of his dues under the V. R. S. under various heads including PF was released to him. The balance 20 per cent in terms of the scheme was to be released within two months. When the petitioner did not receive the balance amount, he applied to the Authorities on 19.3.2018 for the same.

By communication dated 28.3.2018 the SBSTC contended that the excess amounts have been paid to the petitioner by reason of error in calculation. The error was in calculating the length of service of the petitioner. The date of actual superannuation was mistakenly taken as length of service whereas it should have been calculated upto 2017. A sum of Rs.2,90,000/- was stated to have been paid in excess. The same was adjusted. No further amount was stated to be due and payable to the petitioner.

The petitioner is aggrieved by the same. The following arguments are advanced by the counsel for the petitioner.

The petitioner is a Group “C” employee and any sum paid to him even assuming the same is under mistake cannot be recovered or adjusted by the reason, inter alia, of the decision of the Supreme Court in the case of **State of Punjab and others Versus Rafiq Masih reported in (2015) 4 SCC 334.**

SBSTC has provided him with the breakup of the PF dues in October 2017. The petitioner is in the dark about the actual deduction made. A period of nearly one-year has passed from the initial payment of 80% to the petitioner and to recover the same from him would cause undue hardship.

The petitioner in addition to **Rafiq Masih** decision (supra), particularly, paragraph 18 thereof also relied upon the decision of the Supreme Court in the case of ***HEC Voluntary***

Retd. Employees Welfare Society and another Versus Heavy Engineering Corpn. Ltd. and others reported in ***(2006) 3 SCC 708.*** The petitioner also relied upon a decision of a Co-ordinate Bench of this Court in the case of **Jyotsna Rani Das Versus State of West Bengal and others** reported in (***2018) 0 Supreme (Cal) 286*** and another decision in the case of **Sujan Kumar Ghosh Versus State of West Bengal and others** reported in ***2017 (2) CLJ 177***.

In the aforesaid two decisions of the Co-ordinate Benches, of this Court relied upon the decision of **Rafiq Masih (supra)** and the subsequent decisions of the Supreme Court following **Rafiq Masih.**

Per contra learned counsel for the SBSTC submits that the excess payment made to the petitioner was to his knowledge. He submits that 80% payment made in July 2017 was merely an ad hoc assessment and could not amount to a conclusive payment. The communication contained in the letter dated May 28, 2018 recording the excess payment and denial of any further sums of money to the petitioner, therefore, cannot constitute a recovery within the meaning of the decision of **Rafiq Masih.**

The Court has carefully considered the submissions of the parties. It is not in dispute that excess payments have been made. It is equally true that the final order of payment was not done until May 28, 2018. What was paid on July 28, 2017 was ad hoc. This Court cannot disbelieve the SBSTC when they have explained the error having cropped up by reason of taking the normal superannuation date of the petitioner as he qualifying service for retirement dues under the V.R.S. as opposed to the date on which the petitioners application for VRS was accepted i.e. 2017. The mistake of this nature is quite understandable since the Provident Fund is handled by the Provident Fund Trustees and the other benefits under the V.R.S. is dispensed by the Board of Directors of the Corporation.

The question that needs to be answered is two-fold. Firstly, whether in the facts of the case, any recovery can be deemed to have been effected by the employer. It is only after answering this question that the propriety of such recovery can be assessed in view of the dicta laid down by the Hon'ble Supreme Court and as applied by a Co-ordinate Bench of this Court referred to herein above.

It has already been seen that only a part payment was made on July 28, 2017, that too of an ad hoc amount that is not conclusive. The communication on May 28, 2018 cannot be deemed to be an order of recovery.

The recovery of excess or unauthorized payment to an employee by an employer that came to be subject matter of the **Rafiq Masih** decision (supra) was in the context of any wrongful payment made prior to retirement, particularly, two years prior thereto and recovery thereof during that period or post superannuation. In the instant case, it is clearly found that the order dated May 28, 2018 is not a recovery and can at the most be treated as a final settlement. The judgments cited by the counsel for the petitioner may not have the application in this regard.

The second question that needs to be addressed, therefore, becomes academic i.e., on the assumption that there was any excess payment made and recovery is sought to be effected by the employer. In the instant case, even assuming for the sake of argument that the order dated May 28, 2018 is, in fact, the recovery one needs to bear in mind the dicta of the Supreme Court at paragraph 12 of the **Rafiq Masih** decision which is set out below.

> "**12.** Reference may first of all be made to the decision in *Syed Abdul Qadir* v. *State of Bihar* [*Syed Abdul*

> *Qadir* v. *State of Bihar*, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] , wherein this Court recorded the following observation in para 58: (SCC p. 491)
>
> > "*58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered.* But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, *or in cases where the error is detected or corrected within a short time of wrong payment*, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram* v. *State of Haryana* [*Sahib Ram* v. *State of Haryana*, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , *Shyam Babu Verma* v. *Union of India* [*Shyam Babu Verma* v. *Union of India*, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , *Union of India* v. *M. Bhaskar* [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] , *V. Gangaram* v. *Director* [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652] , *B.J. Akkara* v. *Govt. of India* [*B.J. Akkara* v. *Govt. of India*, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] , *Purshottam Lal Das* v. *State of Bihar* [(2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508] , *Punjab National Bank* v. *Manjeet Singh* [(2006) 8 SCC 647 : (2007) 1 SCC (L&S) 16] and *Bihar SEB* v. *Bijay Bhadur* [(2000) 10 SCC 99 : 2000 SCC (L&S) 394] ."
>
> (emphasis supplied)

It is clearly evident that the dicta laid down in **Rafiq Masih** decision was not intended to confer any right on an employee but to address an unfairness and hardship that may arise in attempting to make recoveries from an employee immediately prior to his retirement or thereafter. In the instant case, this Court finds from a plain reading of the writ petition that the petitioner has not pleaded hardship. The petitioner has also not stated that he has altered his position in any way having calculated his terminal benefits on the basis of 80% payment made in July 2017. It is not even stated that any financial commitment or otherwise has been made by the petitioner based on any representation by the employer, contained in the year July 2017.

In those circumstances, this Court is of the view that the petitioner cannot come within the scope of the situations set out in paragraph 18 of the **Rafiq Masih (supra)** decision.

The other two decisions cited by the counsel for the petitioner in the context may also be addressed. In ***Sujan Kumar Ghosh (supra)***, the Co-ordinate Bench was dealing with the case where the employee retired as an Assistant Teacher in a School and retired after 39 years of service in June, 2006. The employee's pay was re-fixed by the D.I. of Schools and the Pension Payment Order of May, 2006 shown a overdrawn of Rs. 1.40 lakhs. The wrong fixation of pay during service, being incorrect was never informed to the petitioner until after retirement. It is only post retirement that the wrong fixation which may have been detected at the time of issuance of P.P.O. Pursuant thereto recovery was sought to be effected. The application of the **Rafiq Masih (supra)** decision in such circumstances was appropriate. The facts of ***Sujan Kumar Ghosh (supra)*** are completely different from that of the instant case and hence the said decision cannot help the petitioner.

In the ***Jyotsna Rani Das decision (supra)*** the facts were that the petitioner therein was also a primary teacher under the Government of West Bengal. Even in the said case, a wrong Pension Payment Order came to be issued for wrongful fixation of the petitioner's pay scale while she was already in service for a long period of time. The excess amount of Rs. 42,538/- was sought to be recovered from the gratuity amount payable to the petitioner therein. It is, therefore, clearly evident that the two decisions are completely distinguishable from the facts of the instant case.

The jural relationship of the petitioner in the instant case with the employer ceased with the release of the petitioner's post acceptance under the V.R.S. The decision ***HEC Voluntary***

Retd. Emps. Welfare Soc. (supra) cited by the petitioner, particularly, paragraph 19, is an undisputed proposition of law.

The fact that is vital to be addressed is as to whether any serious disadvantageous position to the petitioner has cropped up by reason of an error committed by the employer SBSTC. In the absence of any such disadvantage or hardship or alteration of position, this Court is of the view that the claim for refund by the petitioner would definitely come under the category of unjust enrichment. The petitioner cannot make wrongful gain by on account of a mistake committed by the employer.

The petitioner's claim, therefore, fails on both the questions as indicated herein above.

Accordingly, the writ petition is dismissed.

There shall be no order as to costs.

This Court places on record its appreciation for the assistance rendered by the counsel for the petitioner and the strenuous efforts to put forward his client's case.

All parties are to act on a server copy of this order on the usual undertaking.

(Rajasekhar Mantha, J.)