

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4631 OF 2021

- PETITIONERS :-**
- 1] Union of India, through Its Divisional Railway Manager, having office at South East Central Railway, Divisional Office, Personnel Department, Kingsway, Nagpur-440001.
 - 2] The Senior Divisional Personnel Officer, South East Central Railway, Divisional Office, Personnel Department, Kingsway, Nagpur-440001.
 - 3] The Divisional Personnel Officer, South East Central Railway, Divisional Office, Personnel Department, Kingsway, Nagpur-440001.

...VERSUS...

RESPONDENT :- Chandramani U. Patil, Senior Passenger Guard, South East Central Railway, Nagpur, R/o Plot No.22, Parwati Nagar, Near Awade Flour Mill, Joginagar, Road, Nagpur-440027.

Mr.Nitin Lambat, counsel for petitioners.
Mr. Rahul Dhande, counsel for the respondent.

**CORAM : SUNIL B.SHUKRE &
ANIL L. PANSARE, JJ.**

DATE : 07.12.2021.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. Learned counsel Shri Dhande waives notice of hearing on behalf of the sole respondent. Heard finally by consent of the learned counsel for the parties.

3. Although, an argument is made by learned counsel for the petitioner that if show cause notice is given, recovery of excess payment can be made, the argument is inconsistent with law laid down in the case of *State of Punjab and others v. Rafiq Masih (White Washer) etc.*, reported in *2015 AIR (SC) 696*. The law is that recovery of excess payment cannot be made from Group-C employee like the respondent at the fag end of his career.

4. The observations made and directions given in para-12 of the citation, *2015 air (SC) 696 (supra)* being relevant, are reproduced as under:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employees, would be impermissible in law:

(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 employers right to recover.”

5. It would be clear from the above directions that the case of respondent is squarely covered by direction No.(ii) which, prohibits an employer to make any recovery of excess payment to an employee within one year before his retirement. This law has not seen any change after the subsequent decisions of the Hon'ble Apex Court came. Therefore, we are not inclined to entertain this petition to the extent it questions the legality of the impugned judgment and order directing the petitioners to refund Rs.2,00,678/- to the respondent within one month from the date of receipt of certified copy of the judgment dated 26th July, 2021.

6. It is pertinent to mention here that certified copy of the impugned judgment have been received by these petitioners on 29th July, 2021 and therefore, as directed by the Central Administrative Tribunal, the petitioners ought to have paid back the amount of Rs.2,00,678/- to the respondent latest by 20th August, 2021.

7. At this stage, learned counsel for the petitioners seeks further time for the petitioners to comply with the order with the said direction.

8. The request is granted and by way of last chance, time till 14th January, 2022 is granted to the petitioners for refunding the amount of Rs.2,00,678/- to the respondent, failing which the respondent would be at liberty to initiate such coercive measures against the petitioners as are permissible in law for ensuring compliance with the said direction.

9. As regards the challenge made in this petition to the second direction of fixing the accountability for wrong fixation of pay, we are of the view that implementation of such a direction, considering the admitted facts that such alleged excess payment was going on for the period of sixteen years during which time, several officers came and went away from the concerned department, it would be a gigantic task for the department to make an enquiry and fix the responsibility. Besides, many of the officers may have retired and therefore, the result of enquiry is likely to be more of academic nature than anything else. Learned counsel for the respondent also agrees that it is not practically possible to implement this direction.

10. In this view of the matter, we are inclined to partly allow the petition and it is allowed accordingly. The direction regarding fixing of the responsibility as contained in operative paragraph No.4(b) of the impugned judgment and order is hereby quashed and set aside. However, we direct the petitioners to refund the amount of Rs.2,00,678/- to the respondent, latest by 14th January, 2022.

11. Rule accordingly. No costs.

(ANIL L. PANSARE, J)

(SUNIL B. SHUKRE, J)