

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 17182 of 2018**

*State of Odisha and others*

.....

***Petitioners***

*Mr. A.K. Mishra, A.G.A.*

Vs.

*Sadan Bag and another*

.....

***Opposite Parties***

**CORAM:**

**DR. JUSTICE B.R. SARANGI**

**Mr. JUSTICE G. SATAPATHY**

**ORDER**

**26.08.2022**

**Order No.**

05.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-Petitioners.

3. The State and its functionaries have filed this writ petition seeking to quash the common order dated 21.09.2017 under Annexure-1 passed in O.A. No.1647(C) of 2010 & batch, by which the Odisha Administrative Tribunal, Cuttack Bench, Cuttack allowed the said O.As. keeping in view the principle settled by the apex Court in ***Rafiq Masih (White Washer)*** (supra), and as the letters under Annexures-6 & 7 to the said O.A. have already been quashed by the Tribunal in O.A. No.694(C) of 2011, which order has already attained finality, the action of the State-Petitioners to recover the amount is illegal and not permissible and as the impugned orders have already been quashed in O.A. No.694(C) of 2011, the Tribunal directed the State-Petitioners not to take any action for recovery of the amount already paid pursuant to said letters.

4. Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-Petitioners vehemently

contended that if the benefit has been extended wrongly, in that case the authority has power to withdraw the same and as such, the Tribunal has committed error apparent on the face of the record, which cannot be sustained in the eye of law.

5. As it appears, opposite party no.1 was engaged as NMR on 19.10.1989 and was brought over to work Charged Establishment vide office memo dtd.18.09.2009, with effect from 01.03.2009. Financial benefits, as due and admissible were also extended to him with effect from the said date. While the matter stood thus, petitioner nos.1 & 2 vide their letters at Annexures-6 and 7 directed that opposite party no.1, who has been brought over to the Work Charged Establishment is entitled to draw his joining and if any excess amount has been paid, should be recovered from the concerned employee. Learned counsel for opposite party no.1 contended that no illegality has been committed in extending financial benefits with effect from the date opposite party no.1 and similarly situated persons have been brought over to Work Charged Establishment and the action of the State-Petitioners directing recovery of the amount is illegal and violative of the fundamental right of opposite party no.1 and others and therefore, the impugned order should be quashed and opposite party no.1 & others should be paid salary from 01.03.2009. Consequently, opposite party no.1, who is also working for long period should be regularized, following the resolution of the Government dated 15.05.1997 vide Annexure-1 to the O.A. It is also contended that the issue with regard to recovery of the arrear amount vide Annexures-6 and 7, have already been settled by the Tribunal in O.A. No.694(c)/2011 and batch and the said order having not been

challenged in the higher forum and has attained finality, there is no scope to take a different view in the matter. Reliance has been placed on the decision of the apex Court in the case of ***State of Punjab and Others. Vs. Rafiq Masih (white Washer)***, AIR 2015 SC 696.

6. After due adjudication, the Tribunal has come to a conclusion that there is no dispute that opposite party no.1 was brought over to the Work Charged Establishment w.e.f. 01.03.2009 vide order dated 18.09.2009. He has been paid salary w.e.f. 01.03.2009, the date on which he was brought over to the regular establishment. He joined in the Work-charged Establishment subsequently. There is no denial of the fact that opposite party no.1 should have been paid salary of the post with effect from the date of his joining and he has no right to claim such benefit w.e.f. 01.03.2009, the date on which he was brought over to the regular establishment. Therefore, the question revolved round whether the benefit already extended by the State-Petitioners can be recovered by the order impugned under Annexures-6 & 7 to the O.A. But this question had come up for consideration before the Tribunal in O.A. No.694(C) of 2011 and the Tribunal vide order dated 11.04.2012 quashed the letter nos.4507 dated 27.03.2010 and 9548, 9549 dated 03.04.2010 and the said letters were impugned in O.A. No.1647(C) of 2010 & batch. As the said letters have already been quashed and the State-Petitioners have not challenged the said order, the Tribunal held that there was no scope to take different view directing recovery, on the basis of the said letters.

7. In ***Rafiq Masih (White Washer)*** (supra), the apex Court has examined the similar aspects and issued guidelines in paragraph-12 of the said judgment, which reads as follows:

*“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 hereinabove , we*

*may as a ready reference, surmise the following few situation, wherein recoveries by the employers, 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 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."*

8. Keeping in view the above principle laid down by the apex Court as mentioned above, this Court does not find any error in the order dated 29.07.2017 passed by the Tribunal in O.A. No.622(C) of 2011 and batch. As such, the benefit, which has already been extended cannot be recovered from the petitioner in view of the letters, basing upon which such benefit has been recovered having not been challenged by the State-petitioners before any higher forum which has reached its finality.

9. Therefore, this Court is not inclined to entertain this writ petition. Accordingly, the writ petition merits no consideration and the same is dismissed.

**(DR. B.R. SARANGI)**  
**JUDGE**

**(G. SATAPATHY)**  
**JUDGE**

