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W.P.No.28687 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice D. BHARATHA CHAKRAVARTHY

W.P.No.28687 of 2022

1.The Chairman cum Managing Director,
BSNL Corporate Office,
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi – 110 001.

2.The General Manager (Personnel)
BSNL Corporate Office,
R.No.221, 2nd Floor, Eastern Court,
Janpath, New Delhi – 110 001.

3.The Chief General Manager,
BSNL, Southern Telecom Projects,
No.25, Greenways Road,
RA Puram, Chennai – 600 028.

3rd petitioner presently known as
M/s.Bharat Sanchar Nigam Limited,
Rep. By its Chief General Manager,
Core Network Tx-South,
No.11, Link Road, Ganapathy Colony,
Guindy, Chennai – 600 032.

.. Petitioners

Vs

1.The Registrar
Central Administrative Tribunal,
High Court Campus,
Chennai – 104.



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2.R.Thangarajan

3.Union of India
Rep. By its Secretary,
Department of Telecommunication,
Government of India,
421, Sanchar Bhavan,
20, Ashoka Road,
New Delhi – 110 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari or any other writ or order, direction in the nature of writ calling for records of the 1st respondent in O.A.No.1404 of 2019 dated 27.07.2022 in allowing the O.A. filed by the 2nd respondent with directions and quash the same.

For Petitioners : Ms.Sunita Kumari

ORDER

(Order of the Court was made by *PARESH UPADHYAY, J.*)

1. Challenge in this petition is made to the order dated 27.07.2022 recorded on O.A.No.1404 of 2019. This petition is by the employer - respondent authorities in the proceedings before the Tribunal.

2. The Tribunal has, by the impugned order, directed the petitioner authorities to refund the amount of Rs.6,10,000/-, along



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with interest, which was recovered from the Applicant from his retirement benefits.

3. Learned advocate for the petitioners has submitted that, the action of the petitioner authorities of recovering the amount from the original applicant, which was paid to him and which he was not entitled to, can not be said to be an illegality and the Tribunal ought not to have interfered with. It is further submitted that, the said recovery is also supported by undertaking which was given by the applicant. In this regard attention of the Court is invited to the document at page no. 42. It is submitted that, the order of the Tribunal needs to be interfered with. It is submitted that this writ petition be entertained. Learned advocate for the petitioners has also relied on the decision of the Supreme Court of India in the case of *High Court of Punjab and Haryana and Ors v Jagdev Singh (Civil Appeal No.3500 of 2006 dated 29.07.2016)*.

4. Having heard learned advocate for the petitioners and having considered the material on record, this Court finds as under:-



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4.1 The contesting respondent (who is not before the Court since notice is not issued) – the applicant before the Tribunal was to retire in April, 2014. As it happens in all cases, few months before the retirement pension papers are being prepared. The said set of pension papers would also include, various annexures in printed format, one of which is the document relied on behalf of the petitioner authorities which is at page no. 42. The very title thereof reads as Annexure 'A' (to be signed by the retired government servant). This leaves no room to come to a conclusion that, the part of the pension papers signed by the original applicant in February, 2014 is treated to be an undertaking by him to recover the amount, which the authorities have done for the period from 2002 till 2014.

4.2 We find that, the amount of wrong fixation of pay from 2002 could not have been recovered in the year 2014. Any action taken by the petitioner authorities in continuation thereof, even if the same is projected to be bonafide, would be unsustainable. We further find that, even if the above referred undertaking is accepted as it is, at the best it would relate to the error in the fixation of pension, if any, and not with the pay fixation which was before more than one decade.



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4.3 We accept the argument of learned advocate of the petitioner authorities that this is not the case where recovery is stayed by the Tribunal but this is a case where the amount is ordered to be refunded. A retired officer, can not be condemned unheard by any legal forum. In the peculiar facts, when the recovery is made from the pensionary benefits, there was no way the original applicant could approach the legal forum while he was in service. When a person has retired and approached the legal forum, the delay has not to weigh against him. It would not be proper for the High Court to consider the aspect of delay against the said applicant. We find that, the direction given by the Tribunal, in the facts of the case, can not be said to be illegal in any manner.

4.4 The decision of the Supreme Court in the case of *High Court of Punjab and Haryana and Ors v Jagdev Singh* relied by the learned advocate for the petitioners, in the facts noted above, would not take the case of the petitioners any further.



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5. For the reasons recorded above, this writ petition is dismissed. No costs. W.M.P.No.27968 of 2022 would not survive.

(P.U., J) (D.B.C., J)
15.11.2022

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PARESH UPADHYAY, J.
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