THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

AND

THE HON'BLE SRI JUSTICE N.V. SHRAVAN KUMAR

Writ Petition Nos.29280 and 30141 of 2022

COMMON ORDER : *(Per Hon'ble Justice Abhinand Kumar Shavili)*

The Writ Petitions are being disposed of by way of a common order as the issue raised in these two writ petitions is one and the same.

2. The Writ Petitions are filed by the petitioners under Article 226 of the Constitution of India to call for the records in respect of the order dated 21.01.2022 passed by the Central Administrative Tribunal, Hyderabad in O.A.No.142 of 2021, and to issue a *Writ of Certiorari* or any other writ or order or direction quashing the said order dated 21.01.2022 of the Central Administrative Tribunal, Hyderabad.

3. Heard Ms. T. Bala Jayasree, learned Standing Counsel for Bharat Sanchar Nigam Limited, for the petitioners; and Mr. Namavarapu Rajeshwar Rao, learned Assistant Solicitor General of India, for the respondents.

4. For the sake of convenience, the facts in Writ Petition No.29280 of 2022 are discussed herein.

5. It is the case of petitioners that respondents were appointed as 'Mazdoors' during the period 1993-1995 and later they were promoted as 'Telephone Mechanics' in the year 2000; at the time of fixing the pay scale of respondents, the petitioners have erroneously fixed the pay-scale under F.R.22(1)(a) w.e.f. 01.10.2000, and later the respondents have applied for Voluntary Retirement under '*Voluntary Retirement Scheme*' in January, 2020, and all the respondents have retired on voluntary basis w.e.f. 31.01.2020; during the audit of the department, it has come to the notice of the petitioners that the respondents were erroneously paid excess; basing upon the audit report, proceedings dated 09.03.2020 and 05.12.2020 were issued and the amounts were recovered from the respondents' Leave Encashment and Ex-Gratia amounts.

6. Aggrieved by the said orders of recovery, respondents approached the Central Administrative Tribunal, Hyderabad Bench by filing O.A.No.142/2021, and the learned Tribunal set aside the impugned recovery orders dated 09.03.2020 and 05.12.2020 by applying the principle laid down by the Hon'ble Apex Court in **State of Punjab vs. Rafiq Masih**[1].

7. Learned counsel for the petitioners further contended that the Tribunal had erroneously allowed the above O.A. by applying the settled principle laid down by the Hon'ble Apex Court in **Rafiq Masih** (1 supra); the decision in **Rafiq Masih** (1 supra) has no application to the facts in the present case, as admittedly the respondents have not retired from service, and that they had retired on voluntary basis,

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[1] (2015) 2 SCC (L & S) Pg.33

that too under the voluntary scheme; as per the principle laid down by the Hon'ble Apex Court, amounts cannot be recovered from the retired employees, and that the said decision has no application to the facts of the present case; that respondents have given an undertaking to the Department that if any amount is found excess, then they would agree to repay back to the Department; admittedly, in the instant case, the respondents were unjustly got enriched as they were not entitled for pay fixation in terms of FR.No.22(1)(a) and therefore appropriate orders be passed in the Writ Petition by setting aside the orders passed by the Tribunal and to direct the petitioners to recover the amount from the respondents.

8. This Court, having considered the rival submissions of both sides, is of the considered view that the learned Tribunal was justified in allowing the O.A. by applying the principle laid down in **Rafiq**

Masih (1 supra) wherein a perusal of the judgment of the Hon'ble Apex Court would make it clear that the Hon'ble Apex Court has summarised the following few situations in para no.12, which is 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 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 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 employer's right to recover."

9. A perusal of the said illustrations would indicate that if the amounts are paid for more than five (05) years, then such amounts cannot be recovered.

10. Admittedly, in the instant case, petitioners have paid the so-called excess amount to the respondents from the year 2000 onwards, but the respondents have retired in January, 2020 on voluntary basis which would mean that the amounts were paid for more than five (05) years. Therefore, the learned Tribunal was justified in setting aside the impugned orders of recovery, i.e., dated 09.03.2020 and 05.12.2020

11. This Court is not inclined to interfere with the orders passed by the Tribunal.

12. Accordingly, the Writ Petitions are dismissed. No costs.

13. As a sequel, miscellaneous applications pending if any in these Writ Petitions, shall stand closed.

ABHINAND KUMAR SHAVILI, J

N.V. SHRAVAN KUMAR, J

Date : 21.07.2022
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