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

WRIT PETITION NO. 7571 OF 2019

Shri Prabir Kumar Bose,
aged about 65 years, Occ. Retired,
R/o Flat No. 502, Swapnil Sharva Apartment,
61, Shivaji Nagar, Nagpur – 10.

PETITIONER

.....VERSUS.....

1. The South – Eastern Coal Fields Limited,
A subsidiary of Coal India Limited,
Seepath Road, Bilaspur – 495006,
through its Chairman-cum-Managing Director.

2. The Director (Personnel),
The South – Eastern Coal Fields Limited,
Seepath Road, Bilaspur – 495006.

3. The General Manager (P & A),
The South – Eastern Coal Fields Limited,
Seepath Road, Bilaspur – 495006.

RESPONDENTS

Shri S.S. Sanyal, Advocate for the petitioner.
Shri C.S. Samudra, Advocate for the respondents.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

ARGUMENTS WERE HEARD ON : JANUARY 2, 2023

JUDGMENT IS PRONOUNCED ON : FEBRUARY 3, 2023

JUDGMENT :(PER : A.S. CHANDURKAR, J.)

In view of notice for final disposal issued earlier, the learned Counsel for the parties have been heard at length by issuing Rule and making it returnable forthwith.

2. The petitioner who was in service with the Western

Coalfields Limited (WCL), a subsidiary of the Coal India Limited has raised a challenge to the order dated 12/4/2022 that has been passed by the General Manager (Pay & Accounts) deciding the petitioner's representation and holding that the recovery of House Rent Allowance (HRA) from the amount of arrears received towards Performance Related Pay was justified.

3. The petitioner who initially joined services with the WCL as an Accountant was promoted from time to time. In January – 2009, the petitioner was posted at Bilaspur on the post of Deputy Chief Manager (Finance). According to the WCL, for the period from 28/9/2010 till his superannuation on 30/9/2014, the petitioner stayed at the guest house of the WCL and did not avail any accommodation. For that reason, he received HRA for the entire period. On his superannuation, the petitioner received No Due Certificate along with most of his retiral dues. The issue with regard to payment of Performance Related Pay came to be approved by the Central Government after the petitioner's retirement. Since the said amount was not paid to the petitioner, he made a representation on 4/4/2016. Despite the said representation, since there was no response to the same, a fresh representation was made on 10/6/2016. On 3/7/2019, the Functional Director, South Eastern Coalfields Limited considered the matter but refused to grant any relief to the petitioner. In that backdrop, the petitioner filed the present Writ Petition seeking a direction that

amount of approximately Rs.3,90,000/- recovered from the Performance Related Pay of the petitioner be directed to be re-paid.

4. In the present proceedings on 16/3/2022, it was noticed that the petitioner's representations dated 4/4/2016 and 24/10/2016 in the matter of releasing of amounts towards Performance Related Pay were pending. The WCL was therefore directed to take a decision on the said representations within a period of four weeks. Accordingly, on 12/4/2022, the WCL held that under Rule 4.7 of the Coal India Executives House Rent Allowance Rules, 2010 (for short "Rules of 2010"), guest house facility could be availed only for a period of six months and not more. The period of six months could be extended after seeking fresh approval of the Competent Authority. Since no such approval was taken, the petitioner was not entitled to receive House Rent Allowance and hence deduction of that amount from the amount of Performance Related Pay was justified. By amending the Writ Petition, challenge is also raised to the order dated 12/4/2022.

5. Shri S.S. Sanyal, learned Counsel for the petitioner submitted that the action on part of the WCL in seeking to deduct an amount of approximately Rs.3,90,000/- from the amount of Performance Related Pay was illegal and unjustified. The petitioner having been issued No Due Certificate prior to his superannuation, there was no justification

on part of the WCL to deduct the said amount. Referring to Rules 4.1 and 4.2 of the Rules of 2010, it was submitted that the petitioner was never provided any company accommodation and therefore his continuation at the guest house could not be faulted. The fact that the petitioner was not provided company accommodation was admitted by the WCL in paragraph 9 of its reply. The petitioner therefore had no option but to continue to reside in the guest house. There was no question of any misrepresentation by the petitioner and hence the allegations made by the WCL in that regard were unjustified. He thereafter referred to the Office Memorandum dated 10/9/2016 in the matter of amounts to be paid towards Performance Related Pay. This issue having been decided after the petitioner's superannuation, he was entitled for the entire benefits and deduction of any amount therefrom was not permissible. In any event, it was submitted that the petitioner having superannuated prior to the action of recovery, the ratio of the decision in *State of Punjab and others Vs. Rafiq Masih (White Washer) and others [(2015) 4 SCC 334]* was attracted. It was thus submitted that the impugned communication dated 12/4/2022 be set aside and the amount deducted from the petitioner's Performance Related Pay be released along with interest.

6. On the other hand, Shri C.S. Samudra, learned Counsel for the respondents opposed the Writ Petition. He submitted that the petitioner was holding a responsible post of General Manager (Finance)

and hence he was aware of the Rules of 2010. The same had come into force on 28/9/2010 and under Rule 4.7 thereof, maximum period of stay permissible in the guest house was for six months. Sanction of the Competent Authority was necessary in case such accommodation was to be continued after expiry of six months. It was submitted that during the entire tenure of the petitioner from 2009 to 2014, he had stayed in the guest house. Even if No Due Certificate was issued to the petitioner, the action of recovery from the amount of Performance Related Pay was justified since that issue was settled only in October – 2016. The said amount was not in the nature of salary but it was in the nature of incentive in addition to the amount of salary. It was for that reason that the WCL proceeded to deduct amounts of Rs.2,99,475/- and Rs.90,000/- from the said amount. The petitioner being aware of the Rules of 2010, it could not be said that he was entitled to retain such benefit. Relying upon the decision in *Thomas Daniel Vs. State of Kerala & Ors. [2022 LiveLaw (SC) 438],* it was submitted that in a case where an employee had knowledge that the payment received was in excess of what was due to him, the Court could exercise discretion in the matter of challenge to the recovery of the amount paid in excess. It was thus submitted that there being no mistake on part of the WCL, it was entitled to recover the excess amount paid.

7. We have heard the learned Counsel for the parties and we

have perused the documents on record. The facts are mostly undisputed and they lie in a narrow compass. The petitioner was posted as General Manager (Finance) at Bilaspur in January – 2009. He availed accommodation at the guest house of the respondents from January – 2009 to 30/9/2014 on which date he superannuated. In this regard, Rule 4.7 of the Rules of 2010 stipulates that an executive staying in guest house is entitled for HRA for a maximum period of six months subject to paying room rent for such accommodation and he does not occupy any other residential accommodation provided by the Company. However, on expiry of the said period of six months, if such executive could not be allotted company's accommodation, he is required to obtain fresh sanction for continuance of HRA from the Competent Authority. It is not the case of the petitioner that after expiry of period of six months, he obtained the approval of the Competent Authority. At the same time, he continued receiving the amount of HRA till his retirement. According to the WCL, the petitioner who was holding a responsible post was aware of the Rules of 2010 and despite that, he continued occupation of the guest house and also received the amount of HRA. It is clear on reading Rules 4.1, 4.2 and 4.7 of the Rules of 2010 that in absence of sanction on the expiry of period of six months, continuation of payment of HRA to the petitioner was not permissible in the absence of approval of the Competent Authority. It is clear from the record that the petitioner continued to receive the amount of HRA without obtaining any such sanction on expiry of period of six months.

8. According to the WCL, the issue with regard to the Performance Related Pay was not settled when the petitioner superannuated. The same was resolved only in October – 2016 and said payments were then made to the eligible employees. The Vigilance Department of the Company having noticed irregular payments of HRA to various employees including the petitioner, recovery of such excess payments was initiated. Thus, when the arrears of Performance Related Pay were to be paid to the petitioner, amounts of Rs.2,99,475/- and 90,000/- towards the amount of HRA to which he was not entitled came to be deducted. We find that such action of recovery from the petitioner cannot be faulted merely on the ground that the petitioner was issued a No Due Certificate when he superannuated. The deduction as sought to be made is from the incentive amount towards Performance Related Pay. There is no deduction from the amount of pension of the petitioner. The deduction has been made from the amount that the petitioner was entitled to receive only after resolution of the issue with regard to the Performance Related Pay in October – 2016. We also find that there is a distinction between amount paid erroneously without the employee being responsible for it and the employee receiving excess amount than what is due to him with the knowledge that such amount was received despite

not being entitled to it. The distinction in that regard has been recognized in *Thomas Daniel (supra).* We find that by virtue of Rule 4.7 of the Rules of 2010 which the petitioner was aware, he was not entitled to receive HRA after expiry of period of six months of his stay in the guest house without further sanction of the Competent Authority. The petitioner was holding a responsible post of the General Manager (Finance) and in these facts we do not find that the ratio of the decision in *Rafiq Masih (supra)* would be attracted.

9. The order dated 12/4/2022 records that on such irregularity being noticed by the Vigilance Department of the Company, the excess amount paid to the petitioner was recovered from the amount of his Performance Related Pay. We thus find that the action of recovery is neither malafide nor unjustified or illegal for this Court to interfere in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Consequently, the Writ Petition stands dismissed. Rule stands discharged. No costs.

(**MRS. VRUSHALI V. JOSHI, J.**) (**A.S. CHANDURKAR, J.**)

Sumit