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W.P.No.6997 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2023

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI
AND
THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No.6997 of 2023

1.The Chairman and Managing Director
Bharat Sanchar Nigam Limited
Corporate Office, Harichandra Mathur Lane
Janpath, New Delhi-110 001.

2.The Chief General Manager
BSNL, 7th floor
BSNL ADMN building
16, Greams Road, Chennai-600 006.

3.The Principal General Manager
BSNL, O/o. Principal
General Manager, BSNL
No.4, Bharathidasan Salai, Trichy-620 001.

4.The Accounts Officer (Drawals)
O/o. Principal General Manager
BSNL, Trichy-620 001.

5.The Accounts Officer (Pension)
O/o. Principal General Manager, BSNL
Trichy-620 001.

.. Petitioners



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Vs.

1.K.Rajendran

2.The Registrar
Central Administrative Tribunal
Madras Bench, City Civil Court Building
Chennai-600 104.

.. Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for Writ of Certiorari to call for the records of the 2nd respondent pertaining to the impugned order passed in O.A./310/01172/2015 dated 27.07.2022 and quash the same.

For Petitioner : Mr.S.Udayakumar

ORDER

(Order of the Court delivered by V.LAKSHMINARAYANAN, J.)

The 1st respondent, who is the applicant before the Central Administrative Tribunal in O.A./310/01172/2015, challenges the order of recovery of amount of Rs.2,05,571/- and for already recovered amount of Rs.19,000/-. The recovery order was passed on 24.06.2016.



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2. The facts leading to the Original Application are the applicant/1st respondent was recruited as Causal Labourer by the respondents/Writ Petitioners. While doing Lineman's duty, he was promoted to the post of Sub-Inspector (Operative) in the year 1997. On and from 01.10.2000, the Post and Telegraph Department was bifurcated from the Department of Telecommunication and an entity called “Bharath Sanchar Nigam Limited” (BSNL) was created. On 10.04.2000, the applicant/1st respondent was promoted to the post of Telecom Mechanic. There were two upgradations, which he enjoyed one in the year 2004 and other in the year 2011.

3. At the time of pay revision/promotion, options were called for from the applicant/1st respondent. He gave an option within the time period. This seems to have been the procedure followed by the Department of Telecommunication and other Central Government Departments as per the Fundamental and Supplementary Rules.

4. When BSNL was created, it was by an agreement between the Department of Telecommunication and BSNL. It was agreed that the assets



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and liabilities including staff were transferred to BSNL. It was further agreed upon that the Rules and Regulations of the Department of Telecommunication will be applicable to BSNL till the new rules were framed by the latter.

5. The applicant/1st respondent as per the option, opted for fixation of pay in terms of Fundamental Rules 22(I)(a)(1). His pay was fixed, even while he was working in the Department of Telecommunication. It was the case before the Tribunal that without giving any notice, the respondents/Writ Petitioners reported excess payment of Rs.2,05,571/- and commenced recovery of sum of Rs.19,000/- per month commencing from June 2016 to 30th April 2017. The applicant/1st respondent alleged that he came to know the recovery only after recovery orders were implemented. Relying upon the judgment of the Supreme Court in *State of Punjab and others vs. Rafiq Masih* reported in 2015 (4) SCC 334 (white washer case), the applicant/1st respondent approached the Tribunal to set aside the order of recovery and for consequential benefits.



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6. The respondents/Writ Petitioners filed a reply stating that consequent to the implementation of the pay scale in accordance with the Department of Telecommunication, [DTO], New Delhi dated 28.09.2000, the applicant/1st respondent's pay was fixed at Rs.3,710/- in the upgraded scale of Rs.3,200/- 85 – Rs.4,900/- on 01.04.1998 and to Rs.3,795/- on 01.04.1999. Inadvertently, it was fixed at Rs.4,050/- instead of Rs.3,880/- on 01.04.2000. They further stated that it was only in the year 2016, they came to know that the pay anomaly had been wrongly fixed for the applicant/1st respondent and found pay fixation from 01.04.2000 and subsequent to 01.04.2000 were wrong. Hence, they issued pay fixation memos and calculated over payment. The pay was revised from 01.04.2000 till the date of order i.e., 22.02.2016. As per revision, it was reduced from Rs.3,880/- to Rs.4,050/-.

7. The respondents/Writ Petitioners admitted fitment of pay was done during the time, the applicant/1st respondent was working with the DOT. It had been by virtue of wrong fixation by that Department. It is also stated that Department had suo motu fixed Rs.19,000/- per month as the monthly



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amount to be recovered. It was also decided to recover the balance from the superannuation benefits as the applicant/1st respondent retired on 30.04.2017.

8. On the date of filing of the application before the Tribunal, Rs.38,000/- had been recovered. On the basis of the bunch of cases of Telecom Mechanics, the respondents/Writ Petitioners came to a conclusion that the applicant/1st respondent was entitled to other enhancement and also entitled to arrears. Therefore, they revised the recovery amount from Rs.2,05,571/- to Rs.99,425/- and since Rs.38,000/- had already been recovered, they sought to recover Rs.61,425/-. The respondents/Writ Petitioners relied upon Rule 71 of the Central Civil Services Pension Rules, 1972 stating that they are entitled to recover the amount even after superannuation of the applicant/1st respondent on 30.04.2017.

9. The Central Administrative Tribunal by its order dated 27.07.2022 relying upon the judgment of “White Washer” case held that impugned orders dated 19.04.2016 and 24.06.2016 deserve to be set aside and



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quashed the same. It further directed the respondents/Writ Petitioners to reimburse the amount already recovered viz., Rs.38,000/- from the salary of the applicant/1st respondent while he was in service and Rs.76,770/- from the terminal benefits and Rs.90,801/- from the pay fixation arrears within a period of three months from the date of receipt of a copy of that order. Impugning the same, the present Writ Petition has been filed.

10. Mr.S.Udayakumar, learned counsel appearing for the Writ Petitioners would submit that the order of the Tribunal needs to be interfered with on account of the fact that it has not analysed the judgments of the Hon'ble Apex Court reported in ***(2016) 14 SCC 267 (High Court of Punjab & Haryana and others vs. Jagdev Singh)*** and ***(2012) 8 SCC 417 (Chandi Prasad Uniyal and others vs. State of Uttarakhand and others)*** in a proper perspective.

11. We have carefully considered the submissions of the learned counsel appearing for the Writ Petitioners. We have gone through the material records and do not feel it is the case, which requires admission



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especially in exercise of Article 226 of the Constitution of India. It is not the case of recovery on the grounds of fraud or misrepresentation and it is the case of bonafide error committed in the year 2000, when the applicant/1st respondent was still in service of the DOT. The law leading to recovery of excess payment has been settled by the Supreme Court in the judgment of ***State of Punjab and others vs. Rafiq Masih*** reported in **(2015) 4 SCC 334**. The Hon'ble Mr. Justice Jagdish Singh Khehar, as his lordship then was, had summarised the position of law in paragraph 12. It reads as follows:

“12. ...

(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.



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(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.”

12. Two particular aspects had to be pointed out i.e., recovery from an employee in class – III & class – IV of the service is impermissible and from retired employees or from employees who are due to retire within one year of order of recovery. Perusal of the record shows that on the date on which order of revision was passed, the applicant/1st respondent was in class – III category and therefore, he will come within the categorisation fixed in the “White Washer” case.

13. The other judgment of the Supreme Court that was relied on by the learned counsel is reported in ***(2016) 14 SCC 267 (High Court of Punjab & Haryana and others vs. Jagdev Singh)***. It is no doubt true that the Court had held in paragraph 11 of the judgment cited above, excess payment can be recovered by the Department and Clause (ii) of the



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principles laid down in “White Washer” case are not applicable to the petitioner in that case. However, on a careful reading of the judgment especially paragraph 9 of the judgment shows that the Writ Petitioner in that case had given an undertaking at the initial instance itself and therefore, the Court had fixed him to the undertaking given and permitted recovery. This is clear from the last two lines of paragraph 11 where the Court observed as follows:

“The Officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking”.

The undertaking relied upon by the applicant/1st respondent in the present case, which is at page No.57 of the typed set of papers, shows that the applicant/1st respondent had given an undertaking on 14.09.2016. By no stretch of imagination, can such an undertaking ensure in favour of the respondents/Writ Petitioners as the fixation is of the year 2000. We are not persuaded to hold the undertaking relates back to the time when he was still in service of the Department of Telecommunication. The Tribunal has analysed position of law properly and has applied the same. There is no perversity and illegality in the order passed by the Tribunal.



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14. Consequently, the Writ Petition stands dismissed confirming the impugned order of the 2nd respondent dated 27.07.2022. The direction given by the Tribunal should be implemented within three months from the date of receipt of a copy of this order. It is open to the respondents/Writ Petitioners to recover the amount from the Officer who had fixed the salary erroneously.

No costs.

(V.M.V.,J.) (V.L.N.,J.)
06.03.2023

Index : Yes/No
Neutral Citation : Yes / No
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To

The Registrar
Central Administrative Tribunal
Madras Bench
City Civil Court Building
Chennai-600 104.



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