



WEB COPY



W.P.No.31144 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.31144 of 2019 and

WMP No.31268 of 2019

1. The Director (Administration),
Office of the Directorate General,
Central Public Works Department,
Nirman Bhawan, New Delhi.
2. The Executive Engineer (Electrical).
Chennai Central Electrical Division-II,
Central Public Works Department,
Shastri Bhawan, No.26, Haddows Road,
Chennai 600 086.

... Petitioners

Vs.

- 1.M. Thangaraju
2. The Registrar, Central Administrative Tribunal,
High Court Campus, Chennai 600 014.

... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorari, to call for the records relating to the order passed by the second respondent in O.A.No.803/2013, dated 18.11.2016 and quash the same.



For petitioners : Mr.V.Chandrasekaran
For Respondents : Mr.P.Rajendran for first Respondent
R2- Tribunal

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This writ petition has been filed, as against the order passed by the Tribunal in O.A.No.803/2013 dated 18.11.2016, in and by which, the petitioners herein were directed to refund Rs.2,65,646/-, to the first respondent.

2. The brief facts leading to the filing of the writ petition is as follows.

The first respondent herein was initially appointed as Lift Operator on 26.09.1979 and subsequently, he was granted selection grade on 25.09.1986, on completion of 8 years of service. After introduction of ACP scheme, the first respondent was granted financial upgradation w.e.f. 09.08.1999; second financial upgradation on 26.09.2002. After introduction of Modified Assured Career Progression Scheme in the year 2008, he was



W.P.No.31144 of 2019

granted third financial upgradation w.e.f. 01.09.2008, i.e. on completion of 30 years of service. Thereafter, he retired from service on 30.04.2012.

After his retirement, from the retiral benefits, an amount of Rs.2,65,646/- was deducted from the Gratuity and only the balance amount was paid to the first respondent. From the calculation sheet, the first respondent came to know that, the first ACP granted to him on 09.08.1999 was cancelled and the payments made towards the grant of ACP-I from September 1999 onwards were deducted, but, no notice was given to him, before the said deductions were made. Therefore, he approached the Tribunal, wherein, the respondents were directed to refund that amount. Challenging the above order, the Department has filed the present writ petition.

3. Heard the learned counsel appearing for the petitioners as well as the first respondent and we have perused the materials on record.

4. It is the contention of the learned counsel for the petitioners that, the first respondent herein had retired from service on 30.04.2012, however, it was already determined that recovery has to be made, vide revised pay



W.P.No.31144 of 2019

fixation order dated 08.09.2011, reducing the pay of the first respondent and it was also communicated to him. According to the petitioners, the above said revised fixation order was not challenged, but the challenge was made only with regard to the official order dated 06/09.07.2012, fixing the pay band-I of the first respondent in Rs.9300-34800 +G.P.Rs.4200/-. Further, it is contended by the petitioners that, while granting financial upgradation, the first respondent has given undertaking before the Department that, in case any excess amount is paid to him, the same shall be deducted. Therefore, the deduction made by the Department is in order and the same need not be quashed. To support his contention, the learned counsel for the petitioners, by relying upon the decision of the ***Hon'ble Supreme Court in High Court of Punjab & Haryana and others Vs.Jagdev Singh in Civil Appeal No.3500/2006, dated 29.07.2016,*** submitted that, since the first respondent had furnished an undertaking, while granting the ACP benefits by revising his pay scale, he is bound by the undertaking. As such, the order passed by the Tribunal, directing the petitioners herein to refund the amount, is beyond the scope of original application and the same is liable to be set aside.



W.P.No.31144 of 2019

5. Admittedly, the first respondent herein was granted financial upgradations I, II and III, as per the provisions of the ACP scheme.

Subsequently, his pay was revised, pursuant to the Official Memorandum dated 29.04.2011, and revised pay fixation order was also issued on 08.09.2011. It is also an admitted fact that, while granting the ACP benefits, the first respondent has given undertaking to the effect that he would refund to the government, if any excess payment is made, due to incorrect fixation of pay or discrepancies notices subsequently. Therefore, it is the contention of the petitioners that, the amount paid in excess to the first respondent has to be recovered, in the light of the decision of the Hon'ble Supreme Court in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh in Civil Appeal No.3500/2006, dated 29.07.2016.*** cited supra. At this juncture, it is relevant to extract the relevant portion of the above decision, which reads as follows.

10. In ***State of Punjab & Ors etc. vs. Rafiq masih (White Washer) etc.,*** this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law.



W.P.No.31144 of 2019

(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) ...

....

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, **the officer** to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. **The Officer** furnished an undertaking, while opting for the revised pay scale. He is bound by the undertaking.

6. In the above decision, the observation made by the Hon'ble Supreme Court is pertaining to the **Officer**, who was appointed as **Civil Judge**. But, in the instant case, the first respondent herein is a Lift Operator, who comes under the category of Group D and the amount was recovered from his retirement benefits viz., Gratuity. Therefore, as per the decision of the Hon'ble Supreme Court in ***State of Punjab & Ors etc. vs. Rafiq masih (White Washer) etc.***, recovery by the employer from the employees belonging to Class-III and Class-IV service (or Group 'C' and



W.P.No.31144 of 2019

Group 'D' Service) and from the retired employees is impermissible in law.

As such, the above decision of the Hon'ble Supreme Court in **Jagdev Singh Case**, relied upon by the petitioners, will not apply to the present case and they cannot initiate recovery proceedings as against the first respondent, contrary to the decision of the Hon'ble Supreme Court in **Rafiq Masih (White Washer)** case.

7. According to the petitioners, the first respondent has not challenged the earlier revised pay fixation order dated 8.9.2011, but challenged only the subsequent official order dated 06/09.07.2012, fixing the pay band-I of the first respondent in Rs.9300-34800 +G.P.Rs.4200/-. But, as per the earlier order, only pay was revised; thereafter, ACP benefits granted to the first respondent was withdrawn; and an amount of Rs.2,65,646/- was recovered from his terminal benefits, by a separate proceedings. The above said action of the petitioners is in violation to the decision of the Hon'ble Supreme Court in **Rafic Masih** Case, cited supra. Therefore, we are of the view that, the order passed by the Tribunal does not warrant any interference by this Court and hence, the writ petition is liable



W.P.No.31144 of 2019

to be dismissed.

WEB COPY

8. Accordingly, the writ petition is dismissed and the order passed by the Tribunal in O.A.No.803/2013, dated 18.11.2016 is upheld. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (P.D.B.J.)

18.12.2023

Internet: Yes/No
Index : Yes/No
mst

To

The Registrar,
Central Administrative Tribunal,
High Court Campus, Chennai 600 104.



WEB COPY



W.P.No.31144 of 2019

D.KRISHNAKUMAR, J.

and

P. DHANABAL, J.

mst

W.P.No.31144 of 2019

18.12.2023