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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 20.07.2023

+ W.P.(C) 8660/2019 & CM APPL. 35745/2019

THE CHAIRMAN AND MANAGING DIRECTOR,
MAHANAGAR TELEPHONE NIGAM
LIMITED AND ANR.

..... Petitioners

versus

SH. SUBHASH CHANDER

..... Respondent

Advocates who appeared in this case:

For the Petitioners: Mr. Jasbir Bidhuri, Advocate

For the Respondent: Mr. Wills Mathews, Mr. Vijumon Thomas, Mr. Paul John Edison, Mr. Dhanesh M. Nair and Mr. P. Varun Menon, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 14.02.2019 whereby the original application filed by the respondent before the Central Administrative Tribunal has been allowed and notice dated 19.02.2016 and consequential order dated 10.04.2017 whereby the recovery made by the petitioners from the respondent of overpayment of pay and allowances in terms of Rule 71 to 73 of the CCS Pensions Rules, 1972



has been held to be bad in law and a direction issued to the petitioners to refund the same within a period of 60 days from the date of the order.

2. Respondent had joined the services of the petitioners as a Lower Division Clerk and was permanently absorbed on 01.11.1998 and was working as Section Supervisor as on the date of his superannuation on 29.02.2016.

3. A notice was issued to the petitioners on 19.02.2016 stating that while processing his pension case it was observed that his pay has been wrongly fixed at the time of the pay revision (Industrial Dearness Allowance) with effect from 01.01.2007 on account of which it was realised that an overpayment of Rs. 1,67,361/- have been made to him. Said amount was sought to be recovered and ultimately respondent was informed by communication dated 10.04.2017 that the recovery has been made from his salary in the month of February, 2016 and the leave encashment amount.

4. This action of the petitioners was challenged by the respondent by the subject original application. Tribunal by the impugned order relied on the decision of the Supreme Court in *State of Punjab Vs. Rafiq Masih (2015) 4 SCC 334* to hold that since the respondent is a Group 'C' employee and the recovery of an amount overpaid is not permissible. Consequently, Tribunal held the recovery to be bad and directed the petitioners to refund the amount within a period of 60 days.



5. Learned counsel for the petitioners submits that the Supreme Court in *Rafiq Masih (Supra)* was not considering the effect of Rules 71 to 73 of the CCS Pension Rules, 1972 and as such the judgment would not be applicable to the facts of the present case.

6. We are unable to accept the contentions of learned counsel for the petitioners for the reasons that Supreme Court in *Rafiq Masih (Supra)* was considering the right of State as employer to recover amount paid in excess to an employee without any fault of the employee.

7. In the instant case, the respondent was a Group 'C' employee at the time of his superannuation and it is an admitted position that the overpayment to the respondent was not on account of any act on his part but is alleged to be a calculation error on the part of the petitioners at the time of fixing his pay scale.

8. The Supreme Court in *Rafiq Masih (Supra)* relying on a decision in *B.J. Akkara v. Govt. of India* (2006) 11 SCC 709 held as under:-

15. Examining a similar proposition, this Court in B.J. Akkara v. Govt. of India observed as under:

“28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he



receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”

A perusal of the aforesaid observations made by this Court in B.J. Akkara case reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also record, that recovery from the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e. Class III and Class IV – sometimes denoted as Group C and Group D) of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

16. This Court in *Syed Abdul Qadir v. State of Bihar* held as follows:

“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or



fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. The learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir case, that recovery of excess payments, made from the employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before



retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation.

9. Thereafter the Supreme Court noticing that it was 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, summarized a few situations wherein the recovery by the employers was held to be impermissible. The situations enunciated by the Supreme Court are held as under:-

“18. 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.”

10. Respondent was Group ‘C’ employee on the date of superannuation and the recovery was sought to be made within one year of his retirement, in fact, within few days of his retirement.

11. Clearly, the petitioner is covered in the situation nos. 1 and 2 referred to by the Supreme Court in *Rafiq Masih (Supra)*.

12. The Tribunal has also held that the case of the respondent is covered by the situation nos. 1 and 2 and in our view rightly so. Consequently, we are of the view that there is no infirmity in the decision of the Tribunal holding that the petitioners were not entitled to make any recovery and consequently quashing the same and directing the petitioners to refund the amount.

13. We find no merit in the petition. The petition is accordingly dismissed.



14. At this juncture, we also note that though the Tribunal directed the petitioners to refund the amount within 60 days of the impugned order dated 14.02.2019 and there has been no interim protection to the petitioners to the petitioners or stay of the said direction.

15. The petitioners have till date not paid the amount. Accordingly, we direct the petitioners to release the amount deducted from the respondent within a period of four weeks from today with simple interest calculated at the present prevailing GPF rates payable from the expiry period of 60 days from the order dated 14.02.2019.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

JULY 20, 2023
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