IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.12.2023

DELIVERED ON: 02.02.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE TMT.JUSTICE P.DHANABAL

<u>W.P.No.16739 of 2023</u>

R.Ganesan .. Petitioner

Vs.

1.The Central Administrative Tribunal,
Chennai Bench, Rep by its Registrar,
Additional City Civil Court Building,
High Court Campus, Chennai-600 104.

2.Union of India,
Rep by Secretary,
Ministry of Information and Broadcasting,
'A' Wing, Shastri Bhavan,
New Delhi-110 001.

3.Prasar Bharati Secretariat,
Rep by the Chief Executive Officer,
Mandi House, Copernicus Marg,
New Delhi-110 001.

4.The Director General,
All India Radio Akashvani Bhavan,
Parliament Street,
New Delhi-110 001.

5.The Deputy Director (Admn.)
All India Radio,
Akashvani Bhavan,
Parliament Street,
New Delhi-110 001.

6.The Deputy Director General (Engg.)/HDO,
All India Radio,
Chennai-600 004.

7.Pay and Accounts Officer,
All India Radio,
Mylapore, Chennai-600 004. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records from the 1st respondent Tribunal in connection with an impugned order passed in O.A.No.543 of 2020 dated 13.01.2023 and quash the same, consequently direct the 6th respondent to release the "Earned Leave Amount" to the tune of Rs.4,50,382/- with 12% interest to the petitioner within the stipulated time.

For Petitioner : Mr.Muthukumar
for M/s.Paul & Paul

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General
for Mr.B.Rabu Mahonar,
Senior Central Government Panel Counsel

ORDER

D.KRISHNAKUMAR, J.

The applicant in O.A.No.543/2020 on the file of the Central Administrative Tribunal, Chennai Bench is the petitioner herein. He filed the said original application seeking to declare the action of the respondents 5 and 6 in withholding a sum of Rs.4,50,382/- from the retirement benefits (Earned Leave Accumulation) as illegal and void as the same is contrary to the law laid down by the Hon'ble Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334.*** The said original application was dismissed by the Tribunal, vide order dated 13.01.2023, against which the present writ petition has been filed.

2. The case of the petitioner is that he served for 37 years in All India Radio and retired from service as Upper Division Clerk on attaining the age of superannuation on 31.08.2020. After his retirement, the respondents 6 and 7 withheld a sum of Rs.4,50,382/- from his Earned Leave Accumulation without any notice or passing any order, on the

ground that the said amount was paid in excess based on the wrong interpretation of the pay rules. According to the petitioner, since he being a Group "C" employee, is covered under the exemptions carved out by the Hon'ble Supreme Court in ***Rafiq Masih case*** (supra). Challenging the order of recovery, the petitioner filed O.A.No.543/2020 before the Central Administrative Tribunal, Chennai and it was dismissed by the Tribunal, vide order dated 13.01.2023, against which the present writ petition has been filed.

3. The learned counsel for the petitioner contended that the petitioner was a Group "C" employee at the time of refixation of pay in 2013 and he retired as Group "C" employee on 31.08.2020 and he come under the 1st criteria carved out by the Hon'ble Supreme Court in Para 18 of ***Rafiq Masih case*** and therefore, the impugned recovery is impermissible in law. The learned counsel for the petitioner further submits that while refixing the pay on 27.01.2016, the respondent has obtained undertaking letter for the said revision of pay and the same is enclosed in the typed set of papers and by relying upon the said

undertaking letter, would not give any legal right to the respondent department to withhold the terminal benefits and the said undertaking letter has been given only for refixation of pay for the past years till 2016 and till his retirement in the year 2020, no recovery proceedings have been initiated. The learned counsel for the petitioner further contended that similarly placed persons has approached the Central Administrative Bangalore in O.A.No.399/2018, wherein order of recovery was set aside by the Tribunal and the same was affirmed by the Division Bench of Karnataka in W.P.No.5557/2020 and the SLP preferred against the same was also dismissed by the Hon'ble Supreme Court in SLP(C)No.17973 of 2021 dated 08.11.2021 and though this was brought to the notice of the Tribunal, the same was not considered and therefore, the impugned order of the Tribunal is liable to be interfered with.

4. Mr.AR.L.Sundaresan, learned Additional Solicitor General, assisted by Mr.B.Rabu Manohar, learned Senior Central Government Panel Counsel appearing for the respondents 2 to 5 would contend that the 6th Pay Commission recommendation was carried out in the year

2008 and all the employees have given an undertaking and thereby the pay has been refixed and released on 31.03.2013 and thereafter, vide OM of the Ministry of Finance, Department of Expenditure dated 28.07.2015, the refixation has been carried out on 27.01.2016 and the same has been corrected. According to the learned counsel for the respondents, the petitioner is very well aware of the said refixation and he has personally involved himself when his pay fixation was carried out and undertaking letter was obtained from the petitioner while refixation of pay during 2016 and therefore, the impugned order of recovery is perfectly valid in the eyes of law and prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the materials on record.

6. It is not in dispute that the petitioner retired as Group "C" employee at the time of his retirement on 31.08.2020, after rendering 27 years of service. The respondents 5 and 6 withheld an amount of 4,50,382/- from his retirement benefits for the excess payment made at

the time of 6th Pay commission implementation, which came to be effected during the year 2013. According to the petitioner, since he retired as Group "C" employee, he is covered by the order passed by the Hon'ble Supreme Court in ***Rafiq Masih's case*** and therefore, the impugned order of recovery is impermissible.

7. At this juncture, it is useful to refer to the principles laid down by the Hon'ble Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others reported in [(2015) 4 SCC 334]*** :

> "**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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (*i*) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
>
> (*ii*) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
>
> (*iii*) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued..."

8. According to the petitioner, he has submitted a representation dated 07.02.2020 for waiver of the recovery amount and the sixth respondent considered and recommended the case of the petitioner for waiver on the ground that he belongs to a Group 'C' employee and he is due to retire in the month of August 2020 and therefore, the petitioner comes under the category of Sl.Nos (i) to (iii) of the decision of the Hon'ble Supreme Court in ***Rafiq Masih's case***. However, the aforesaid recommendation of the sixth respondent was not considered by the respondents 4 and 5 and in the meantime, the petitioner retired from service on attaining the age of superannuation on 31.08.2020. The respondents 6 and 7 while releasing the retiral benefits, had deducted a sum of Rs.4,50,382/- from the petitioner's earned leave accumulation and the said amount was recovered without any notice and without passing any order by the competent authority.

9. In the case on hand, the 6th pay commission recommendation was implemented in the year 2008 and pay has been refixed and released to the petitioner on 31.03.2013 and thereafter, vide OM of the Ministry

of Finance dated 28.07.2016, refixation has been carried out on 27.01.2016, for which undertaking letter was obtained from the petitioner. As per Clause 18(iii) of ***Rafiq Mashi's case***, recovery cannot be made for the period in excess of five years, before the order of recovery is issued. Admittedly, in the case on hand, no recovery order has been passed by a competent authority subsequent to the refixation in the year 2016, in respect of the implementation of the 6th Pay Commission for the year 2008. Therefore, the aforesaid decision of the Hon'ble Supreme Court in ***Rafiq Mashi's case*** squarely covers the grounds raised by the petitioner and the Tribunal has filed to consider these aspects and therefore, the order of the Tribunal is liable to be set aside.

10. In the light of the reasons assigned above, the Writ Petition stands allowed and the impugned order of the Tribunal dated 13.01.2023 in O.A.No.543 of 2020 is set aside. The respondents are directed to refund the amount of Rs.4,50,382/- to the petitioner along with interest @ 6% p.a. within a period of eight weeks from the date of receipt of a

copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.,] [P.D.B., J.]
02.02.2024

Index:yes/no
Internet:yes
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To
1.The Registrar,
The Central Administrative Tribunal,
Chennai Bench, Additional City Civil Court Building,
High Court Campus, Chennai-600 104.

2.The Secretary,
Union of India,
Ministry of Information and Broadcasting,
'A' Wing, Shastri Bhavan, New Delhi-110 001.

3.The Chief Executive Officer,
Prasar Bharati Secretariat,
Mandi House, Copernicus Marg,
New Delhi-110 001.

4.The Director General,
All India Radio Akashvani Bhavan,
Parliament Street, New Delhi-110 001.

5.The Deputy Director (Admn.)
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