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WP No.27616 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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L.Umamageswaran

... Petitioner

versus

- 1.The Registrar,
Central Administrative Tribunal,
Chennai- 600 104.
- 2.Union of India,
Represented by its Secretary N.K.Sinha,
Ministry of Information and Broadcasting,
A wing, Shastri Bhavan,
New Delhi-110 001.
- 3.Mr.F.Y.Sheheryar,
The Director General,
All India Radio, Akasvani Bhavan,
Parliament Street, New Delhi-110 001.



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4.Mr.S.Ramachandran,
The Additional Director General (E) (SZ),
All India Radio & Doordarshan,
Chepauk, Chennai 600 005.

5.Ms.Jayanthi,
The Pay & Accounts Officer,
All India Radio,
Mylapore, Chennai-600 004.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant of the order passed by the first respondent Tribunal in CP No.80 of 2018 dated 01.12.2021 and quash the same and consequently, direct the respondents to release the withhold DCRG amount of Rs.4,27,313/- to the petitioner within the stipulated time fixed by this Court.

For the Petitioner :Mr.D.Muthukumar
for M/s.Hudson Samuel and Partners

For the Respondents : Mr.V.Chandrasekaran
Senior Panel Counsel
for second respondent

ORDER

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

Challenging the order passed by the Central Administrative Tribunal in CP No.80 of 2018 dated 01.12.2021, the petitioner has filed the present writ petition.



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2. Brief facts of the case:

2.1. The petitioner was appointed as Lower Division Clerk in All India Radio on 14.12.1981, and thereafter, he was promoted as Upper Division Clerk on 06.06.2001. Subsequently, Seventh Pay Commission was implemented with effect from 01.01.2006. The Seventh pay Commission had recommended to up-grade the pay scale of 5000-8000, 5500-9000 and 6500-10500 to the single pay scale of Rs.6500-10500 with effect from 01.01.2006 and this recommendation was accepted by the Government. Based on the said upgradation, the petitioner's pay was fixed in the pay band of Rs.9300-34800 with grade pay of Rs.4200 from 01.01.2006 and his basic pay was fixed by taking into consideration the pre-revised scale of Rs.5500-9000. Subsequently, the second respondent has issued a letter dated 03/04.10.2012, wherein, instruction was issued to all the All India Radio to follow the illustration-4A in accordance with Note 2A below Rule-7 to fix the pay in the revised pay structure. Pursuant to the above said instruction of the second respondent, the petitioner's pay was re-fixed by taking into consideration the upgraded scale of Rs.6500-10500 with effect from



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01.01.2006. The said re-fixation was done on the instruction of the second respondent.

2.2. Thereafter, a clarification, dated 31.12.2015, was issued by the Deputy Director (Pers) of the Prasar Bharati, wherein, to arrive at the pay in the pay band, the fitment tables of pre-revised scales of pay in which the officer has drawn his pay as on 01.01.2006 was directed to be used. On 31.01.2016, the petitioner retired from service as Upper Division Clerk, which is a group -C post. In view of the clarification dated 31.12.2015, the petitioner's pay was again re-fixed after his retirement by taking into consideration the pre-revised scale of Rs.5500-9000 by way of an order dated 01.02.2016. The third respondent by way of a letter dated 08/11.03.2016 intimated the petitioner that from his death cum retirement gratuity, an amount to the tune of Rs.4,27,313/- was recovered, consequent to ratification of his pay with effect from 01.01.2006. Aggrieved by the same, the petitioner filed an original application in OA No.572 of 2016 before the Central Administrative Tribunal, seeking to quash the order dated 31.12.2015 of the second respondent and for a direction to the respondents



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to restore the pay of the petitioner as originally fixed in terms of the second respondent's letter dated 03.10.2012.

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2.3. The Central Administrative Tribunal, by order dated 14.07.2017, had disposed the said original application. Paragraph Nos.5 and 6 of the order are extracted hereunder:

'5.We have carefully considered the facts of the case. It is not in dispute that the applicant superannuated on 31.01.2016 from the level of UDC (Group C) and the other of the Honble Apex Court in the State of Punjab and Ors. vs Rafiq Masih (Whitewasher case) cited supra would be applicable in such cases. As a matter of fact, the DOPT had issued Office Memorandum dated 02.03.2016 citing the said judgement of the Hon'ble Apex Court and listing the few situations where recoveries from the employers would be impermissible in law. As the principles laid down by the Hon'ble Apex Court have already been accepted by the DOPT and orders issued in this regard, it is for the respondents to act in pursuance of the same and not resist the prayer for waiver of recovery. As for the citation referred to by the learned counsel for the respondents at Annexure R4, it appears to be in regard to serving employees and not those who had superannuated or were about to superannuate.



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6. In view of the above, we deem it appropriate to direct the respondents to process the applicant's case in accordance with the directions of the DOPT in their Office Memorandum dated 02.03.2016. The retirement benefits of the applicant shall be worked out accordingly within a period of 2 months from the date of receipt of a copy of this order.'

2.4. Thereafter, the petitioner has filed a contempt petition in CP No.80 of 2018 before the Central Administrative Tribunal for the disobedience of the order dated 14.07.2017 passed by the Tribunal. While so, the Department has also filed a writ petition in WP No.31783 of 2018 challenging the order dated 14.07.2017. In the meanwhile, the Department has passed a speaking order vide proceedings dated 04.08.2018, rejecting the claim of the petitioner. Subsequently, the said writ petition was withdrawn on 17.06.2019. Thereafter, the Tribunal dropped the contempt petition by holding that the competent authority has reconsidered and passed an appropriate order with liberty to the petitioner to act in accordance with law, if so advised. The said order is under challenge in this writ petition.

3. Learned counsel for the petitioner strongly relies upon the decision of the Hon'ble Supreme Court in the case of ***State Bank of India and***



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Others v Dr.Vijay Mallya reported in **2022 SCC OnLine SC 826**, wherein it

has held as follows:

"14. It is, thus, well settled that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. The approach may require the court to pass directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the concerned authorities to set that the contumacious conduct on the part of the contemnor does not continue to ensure to the advantage of the contemnor or anyone claiming under him. It is precisely for these reasons that the direction to have vacant possession delivered to the rightful claimant was passed by this Court in Noorali Babul Thanewala v. K.M.M. Shetty. Mere passing of an order of punishment as stated by this Court in Pravin C.Shah v. K.A.Mohd. Ali would not be enough or sufficient. In a given case, to meet the ends of justice, the concept of purging of the contempt would call for complete disgorging of all the benefits secured as a result of actions which are found by the court to be contumacious"



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4. The learned counsel for the petitioner further submits that in the aforesaid judgment, the Hon'ble Supreme Court has held that if there is any willful disobedience of the order passed by the Court/Tribunal by the authority concerned, violating the directions passed by the Court, then the order passed by the authority concerned can be set aside and directions can be issued to the authority concerned to pass fresh order or the court can impose punishment on the authority concerned. The Tribunal has neither imposed punishment nor set aside the order passed by the authority concerned. Therefore, he seeks to set aside the order passed by the Tribunal in the contempt petition and allow the writ petition.

5. Heard the learned counsel for the parties.

6. The Tribunal has passed an order directing the respondents to process the petitioner's case in accordance with the direction of the DOPT in their Office Memorandum dated 02.03.2016. However, it is seen that the authority has rejected the claim of the petitioner without taking into consideration the order passed by the Tribunal to act in compliance of the



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directions of DOPT OM dated 02.03.2016 and the Tribunal, without considering these aspects in proper prospective, has simply accepted the reason stated by the respondents and dismissed the contempt proceedings. Hence, we *prima facie* accept the contention of the petitioner that the order passed by the Tribunal has not been complied with by the respondents and the rejection order passed by the authority is not in consonance with the directions issued by the Tribunal. This Court finds some force on the contention of the petitioner and hence the action of the respondents attracts wilful disobedience of the order of the Tribunal and it can be decided only after submitting the explanation by the respondents before the Tribunal. Hence, we deem it necessary to remand the matter back to the Tribunal to consider afresh and take appropriate decision without being influenced by the observations made by this Court in the present writ petition.

7. Accordingly, the order in CP No.80 of 2018 dated 01.12.2021 passed by the Tribunal is set aside and the matter is remitted back to the Tribunal to consider afresh and to take appropriate decision in accordance with law and pass orders, as early as possible, within a period of 12 weeks



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from the date of receipt of a copy of this order. It is left open to the parties to place the relevant judgments before the Tribunal in support of their contentions and the Tribunal shall take appropriate decision based on the decisions placed by the petitioner.

8. In fine, the writ petition stands allowed. There shall be no order as to costs.

[D.K.K., J.] [K.B., J.]
15.04.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn

To
The Registrar,
Central Administrative Tribunal,
Chennai- 600 104.



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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

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