IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.09.2024

DELIVERED ON: 29.10.2024

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B. BALAJI

W.A.No. 2729 of 2024

and CMP.No. 19969 of 2024

State Bank of India
Rep. By its Assistant General Manager,
Centralized Clearing Processing Centre,
No. 965, Harita Center, Near Lakshmi Mill Junction,
Avinashi Road, Pappanaickenpalayam,
Coimbatore -641037 .. Appellant

Vs

K.Manickam ..Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.02.2024 in W.P.No. 12410 of 2024.

For Appellant : Mr. M.L.Ganesh

For Respondent :

J U D G M E N T

(D.Krishnakumar, J.)

Aggrieved by the order passed by the writ court in W.P.No. 12410 of 2021, dated 26.02.2024, the present writ appeal has been filed by the appellant.

Brief facts:

2. The respondent/writ petitioner is an Ex-service man, was discharged from the Indian Air Force on 30.06.2000. Thereafter, he joined as Customer Relationship Associate in the appellant-bank on a basic pay of Rs.5200/- per month and retired from service on 30.04.2021. The appellant Bank has issued order on 23.03.2021 i.e before one month of his retirement, revising the pay fixation of the respondent from Rs.8400/- to Rs.7000/- w.e.f 03.03.2008. According to the appellant-bank, the said revision of pay fixation was in accordance with the 9th Bipartite Settlement. Challenging the said order of the appellant-Bank, the respondent has filed a writ petition

before this Court in W.P.No. 12410 of 2021. This Court by order dated 26.02.2024 allowed the said writ petition and directed the appellant-Bank to refund the recovery that has been so far made from the petitioner. Aggreived by the said order of the writ court, the present writ appeal has been filed by the appellant-Bank.

3. The learned counsel for the appellant submits that the writ court has allowed the writ petition solely on the basis of the decision rendered by Hon'ble Apex Court in State of Punjab and others -Vs- Rafiq Masih (White Washer) reported in (2015) 4 SCC 334 observing that any excess payment made to the petitioner cannot be recovered before one month to the date of his retirement.The Learned Single Judge failed to consider that the respondent's salary, at the time of re-employment, was higher than that of the employees covered under the said decision. Furthermore, the respondent's claim for revised pay fixation and protection of his pre-retirement pay was not in line with the rules and guidelines issued by the Government of India. It is submitted that the appellant Bank had rightly recovered the excess payment made to the respondent based on the 9th

Bipartite Settlement and in accordance with the applicable guidelines.

4. The learned counsel for the appellant has further submitted that the respondent's pay fixation was carried out in line with the directions of the Indian Banks' Association (IBA) and based on the 9th Bipartite Settlement regarding the re-employment of ex-servicemen. The revised fitment on 23.03.2021 was the result of a clarification from IBA regarding ex-servicemen who retired after 01.01.2006. Despite this, the respondent did not implead IBA or the Ministry of Defence, both of which are necessary parties to the case. Therefore, the order passed by the appellant Bank to recover of excess pay from the respondent is in accordance with the applicable guidelines issued by the Government of India and therefore the impugned order passed by the writ Court directing the appellant Bank to refund the recover amount to the respondent is unsustainable in law and liable to be set aside.

5. It is the contention of the respondent before the writ court that the

appellant Bank has passed recovery order dated 23.03.2021 unilaterally reducing the respondent's basic pay from Rs.8400 to Rs.7000 w.e.f 2008 from the date of his appointment and deducted a sum of Rs.58216.66 from March 2021, after having credited Rs.5,60,379.44/-, wrongly deducted Rs.5,98,406.68 in April 2021 salary and Rs.58205.03 from the respondent's retirement benefits paid in May 2021. The learned counsel appearing for the respondent has submitted that the respondent being a Class III award staff, the decision rendered by Hon'ble Apex Court in State of Punjab and others -Vs- Rafiq Masih (White Washer) reported in (2015) 4 SCC 334 squarely applies to the case of the respondent. The writ Court has rightly considered the above aspects and directed the appellant Bank to refund the amount recovered from the respondent. Therefore, the order of the writ court is perfectly valid and does not require any interference by this Court.

6. Heard Mr. M.L.Ganesh, learned counsel appearing for the appellant Bank and perused the materials available on record.

7. The present case revolves around the revision of pay fixation for an

ex-serviceman re-employed in the appellant bank and the subsequent recovery of alleged overpayments made prior to his retirement. The core issue is whether the pay fixation and recovery adhere to applicable rules, and more importantly, whether the Rafiq Masih (White Washer)case applies, granting protection to the respondent from recovery.

8. The respondent, who served in the defense forces and was re-employed by the bank, had his pay initially fixed at a basic pay of Rs. 9,680/- based on the bank's interpretation of pay protection rules for ex-servicemen. According to the bank, this fixation should have excluded Military Service Pay (MSP), as per the Indian Banks' Association (IBA) guidelines. However, after a revision on 08.10.2014, the petitioner's basic pay was revised to Rs. 8,400/- resulting in a reduced total salary. Later, the bank further revised the pay scale, fixing the petitioner's revised basic pay at Rs. 6,600/- on 23.03.2021, just before his retirement. This led to recoveries from his salary and retirement benefits, prompting the petitioner to challenge the recovery.

9. In analyzing whether Rafiq Masih applies to this case, it is essential to revisit the guidelines laid down by the Supreme Court. The Rafiq Masih case provided protection primarily for Class III and IV employees, prohibiting recovery of overpayments in cases where such recovery would result in undue hardship, especially when the employee is on the verge of retirement. The Hon'ble Supreme Court in Rafiq Masih outlined several specific instances where recovery would be impermissible by the employer. The relevant portion is extracted hereunder;

> (i) Recovery from the employees belonging to Class III to 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.
>
> (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, whether 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. The contention of the appellant is that the respondent is not coming under the category as defined in the Rafiq Masih case, since the respondent was drawing more salary than the employees covered under the aforesaid Rafiq Masih case. The appellant has not produced any document to prove the said statement. Even for the sake of arguments that if the respondent does not fall under Class III or IV, the Hon'ble Supreme Court's reasoning in Rafiq Masih case extends beyond the strict classification of employees. The overarching principle in Rafiq Masih case is to protect employees from financial distress due to recoveries, particularly when they are nearing retirement and without any fault or misrepresentation on their part. The recovery of overpaid amounts just before retirement would undeniably cause undue hardship to the respondent, particularly when such payments were made based on the pay fixation rules that were later revised.

11. Undisputedly, the respondent was not responsible for the excess payment, it was due to the appellant Bank's initial pay fixation, and the revision occurred years later, close to his retirement. The respondent's basic pay in the Armed Forces was Rs. 5,200/- and he was drawing a total pay of Rs. 7,296/- including dearness allowance (Rs.1,976/-) before his retirement. After re-employement in the appellant Bank, his pay was fixed at Rs. 9,680/- and subsequetly revised to Rs. 6,600/- as per the 9th Bipartite Settlement.

12. The appellant Bank's decision to revise the respondent's pay and recover the excess payments, while perhaps procedurally correct from a technical standpoint, disregards the principles of equity and justice that are fundamental in cases where the employee is nearing retirement as held by the Hon'ble Supreme Court in the decision cited supra.

13. In light of the Rafiq Masih case and its broader principles of equity and protection from undue financial hardship, it is evident that the respodent is entitled to relief from the recovery of the overpayments. While Rafiq Masih primarily protects Class III and IV employees, the principles extend to cases where recovery would result in extreme hardship, particularly for employees nearing retirement. The petitioner, being on the verge of retirement, should be shielded from the financial burden of recovery, especially when he had no role in the overpayment and the payments were made based on the earlier pay fixation by the appellant Bank

14. The writ court in the impugned order has rightly applied the Rafiq Masih case's guidelines, recognizing that recovering amounts from the respondent just before his retirement would be unjust and contrary to the principles laid down by the Supreme Court. The appellant Bank focus on technical adherence to IBA guidelines, but do not outweigh the principles of fairness and equity. As such, the impugned order passed by the writ court is consistent with the law, and the grounds raised by the appellant Bank do not

provide sufficient reason to overturn the order. Further it is also to be noted that the appellant Bank has not passed any revised order within a stipulated period of six weeks as directed by the writ Court in the impugned order.

15. Considering the facts and circumtances of the case and submissions made by either side, we are of the considered opinion that there is no merits in the present appeal preferred by the appellant-Bank insofar as recovery order passed by the appellant and the same is liable to be rejected.

16. In the result, the writ appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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

29 .10.2024

Internet: Yes
Index   : Yes
Speaking Order

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D. KRISHNAKUMAR, J.
and
P.B. BALAJI, J.

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