IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

**and**

**THE HONOURABLE MR.JUSTICE K. KUMARESH BABU**

**W.P.No.30410 of 2018 and**

**WMP No.35477 of 2018**

1.Union of India, rep by
The Chief General Manager
Bharat Sanchar Nigam Limited
(A Government of India Enterprise)
O/o. The Chief General Manager
Chennai Telephones
78, Purasawalkam High Road
Chennai-600 010

2. The Accounts Officer
O/s.Principal Controller of Communications Accounts
Ministry of Communications, Dept. of Telecommunications
Government of India, 60 Ethiraj Salai
Tamil Nadu Circle, Chennai 600 008 ... Petitioners

Vs.

1.S.Amanullah

2.The Central Administrative Tribunal
Rep by its Registrar
Madras Bench, Chennai- 600 104.

3. State Bank of India,
Centralised Pension processing Centre (Code No.4470)
No.112/4, Kaliamman Koil Street,
Virugambakkam, Chennai 600 092.
(R3 was impleaded as per the order made in
WMP No.25271/2023 in W.P.No.30410/2018,
dated 01.04.2024) ... Respondents

**PRAYER**: Writ petition is filed under Article226 of Constitution of India, for issuance of a writ of certiorari, calling for the records of 2nd respondent and quash the order dated 01.02.2018 made in OA/310/01859/2017.

For Petitioners : Mr.V.Chandrasekaran

For Respondents : Mr.L.Chandrakumar for R1
R2-Tribunal

ORDER

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

This writ petition has been filed by the BSNL to quash the order passed by the Tribunal in OA/310/01859/2017, dated 01.02.2018, in and by which, the petitioners herein were directed to stop the recovery of the excess amount forthwith and refund the amount already recovered, in violation of the law laid down by the Hon'ble Apex Court contained in OM of Dopt, dated 02.03.2016.

2. The brief facts leading to the filing of the writ petition is as follows. The first respondent herein had served in the BSNL as Telegraph Office Assistant and had retired from service on superannuation on 31.07.2010. Thereafter, he was granted pension till 2016. Subsequently, by virtue of order dated 07.01.2015 passed by the Department, it was orally informed to the first respondent that an amount of Rs.12,000/- has to be deducted from his pension. The bank authorities, without serving any details had started to deduct Rs.12,000/-. The first respondent had requested the bank authorities to reduce the recovery amount from Rs.12,000/- to Rs.9,000/-. and also made representations dated 15.07.2016 and 24.11.2016 to the Department to give the details with regard to the excess payment made by the bank. However, there was no response from the Department and since the reduction of pension is arbitrary and in violation of natural justice, he filed the original application before the Tribunal to quash the order dated 07.01.2015 passed by the petitioner Department. The above application was allowed by the Tribunal and challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioners submitted that the first

respondent was appointed as wireman on 16.01.1975 in the erstwhile Telecom Department and thereafter, he retired from service on superannuation on 31.07.2010. The second petitioner fixed the pension of the first respondent at Rs.11,590/- with IDA (Industrial Dearness Allowance) rates and sent the PPO to the State Bank of India, Centralized Pensions Processing Centre, Virugambakkam, Chennai for making monthly payment to the first respondent. However, the Bank, instead of applying the rates of IDA at 35.1%, had applied 78.0% of IDA and made excess payment to the first respondent, which resulted in excess payment of of Rs.4,15,804/- from 01.08.2010 to 28.02.2015. The above mistake was noticed at the time of pension Vouching Auditing and the same was intimated to the Bank, vide e-mail on 07.01.2015 to recover the excess paid amount, under intimation to the first respondent.

3.2. The learned counsel further submitted that, the proposed recovery at 12,000/- per month was intimated to the first respondent, by the Bank, vide letter No.Msc. dated 14.03.2015 and the first respondent had also accepted the factum of receiving excess payment of IDA and had requested the bank to reduce the monthly recovery from Rs.12,000/- to Rs.9,000/-. However, the Tribunal, without considering the facts in proper perspective, has allowed the application, following the decision of the Hon'ble Supreme Court in ***State of Punjab & Ors etc. vs. Rafiq masih (White Washer).*** He further submitted that, the said mistake was occurred only due to the Bank, who made excess payment by applying the excess rate of IDA and hence, the petitioners are nothing to do with the above mistake. Therefore, he prayed to set aside the order passed by the Tribunal.

4. The learned counsel for the first respondent submitted that, the first respondent had retired from service on 31.07.2010 and thereafter, he was granted pension till 2015. The petitioners have not taken any steps from 2010 to 2015 to initiate the recovery proceedings. Thereafter, without giving any notice with regard to the recovery proceedings, that too without giving any details with regard to the excess payment made to the first respondent, the Department has initiated recovery proceedings. He further submitted that, in the light of the decision of the Hon'ble Supreme Court in ***White Washer*** case, the recovery proceedings cannot be initiated as against the

employees comes under the C and D category. Therefore, there is no error in the impugned order to interfere over the same and hence, he seeks for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and we have also perused the materials on record.

6. The point for consideration is whether the petitioners/Department are entitled for recovery of the excess amount paid to the first respondent.

7. The primordial contention of the learned counsel for the petitioners is that, the decision of the Hon'ble Supreme Court in ***White Washer*** is not applicable to the present case, on the simple ground that the petitioners issued notice to the first respondent and after receiving the notice, the first respondent has given a letter to reduce the recovery amount from Rs.12,000/- to Rs.9,000/-. Therefore, the first respondent accepted that, he had received the excess pension amount. It is further contention of the petitioners that, the first respondent has given an undertaking before Bank

that any payment found to be in excess, would be required to be refunded and in such circumstances, being accepted that the first respondent had received the excess payment of pension, he cannot take out of stand for challenging the above recovery proceedings.

8. We have perused the letter dated 7.1.2015, issued by the second petitioner to the Bank, in which, it is stated as " *kindly recover the excess amount paid to the pensioner and credit to this office account and intimate out office. Immediate action may be taken to recover the amount from the pensioner from the day the excess IDA drawn. This also may be intimated to the pensioner* ". Subsequent to the above letter, the bank had sent a letter, dated 14.03.2015 to the first respondent stating that, an amount of Rs.12,000/- per month will be recovered from March 2015 to January 2018.

9. It is to be noted that, before initiating the recovery proceedings, the petitioners have not issued any show cause notice to the first respondent, providing opportunity for him to give his explanation. Further, the first respondent has given a representation dated 24.11.2016 to the petitioners to

give the details for such recovery and also, by relying upon the ***White Washer case,*** has requested to stop further recovery proceedings and to refund the amount already deducted.

10. At this juncture, it is worthwhile to extract the relevant portion of the above said decision of the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih and others*** (***White Washer) reported in (2015) 4 SCC 334***, which runs as follows.

> 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) ..
>
> (ii) Recovery from the retired employees or the employees, who are due to retire within one year, of the order of recovery.

In the light of the above decision of the Apex Court, recovery from the first respondent is impermissible in law and hence the same cannot be initiated by the petitioners, based on the impugned order. Though the petitioners have contended that the above excess payment was made only due to the mistake of the Bank, we are not inclined to go into the above aspect, except the recovery letter issued by the petitioners/Department, dated 07.01.2015, which was challenged by the first respondent before the Tribunal. The Tribunal by considering the facts and also in the light of the decision of the Hon'ble Supreme Court in the ***White Washer*** case, stated supra, has given reasoning order, and has rightly directed the petitioners to stop the recovery proceedings and to refund the amount, already recovered to the first respondent. Therefore, we are not inclined to interfere with the orders passed by the Tribunal and hence, the writ petition is liable to be dismissed.

11. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**(D.K.K.J.) (K.B.J.)**

**01.04.2024**
**(2/2)**

Internet: Yes/No
Index : Yes/No
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To

The Registrar, Central Administrative Tribunal,
Madras Bench, Chennai- 600 104.

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

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**W.P.No.30410 of 2018**

**01.04.2024**
(2/2)