2025:PHHC:154807-DB

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

236 CWP-14608-2024 (O&M)
Date of decision: 10.11.2025

Bharat Sanchar Nigam Limited and Others ...Petitioners

Versus

Kamal Kiran and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Anish Babbar, Advocate, for the petitioners.

Mr. Arvinder Singh, Advocate,
for respondents No.1 and 3 to 18.

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HARSIMRAN SINGH SETHI, J. (Oral)

CM-12187-CWP-2024

1. This is an application under Order 22 Rule 4 Read with Section 151 of CPC for placing on record the Legal Heirs of Respondent No.2.

2. In view of the averments made in application, the same is allowed and name of the applicants as mentioned in the para-No.3 of the application are ordered to be impleaded as LR's of respondent No.2. Amended memo of parties is taken on record.

Main Case

1. In the present petition, the challenge is to the order passed by the Central Administrative Tribunal, Chandigarh Bench (in short-Tribunal) dated 06.12.2023(Annexure P-2) by which, the recovery sought to be done from the respondent by the petitioner on the ground that excess amount has been paid to the respondents in pursuance to the re-fixation of pay, has

been set aside and a direction has been given to the petitioners to refund the amount so recovered by them from respondents.

2. Learned counsel for the petitioner argues that no hardship faced by any respondents has been brought to the notice of this Court so as to show as to why the recovery of excess amount paid to the respondents should not be done, still the order of recovery dated 14.02.2020 has been set aside by the Tribunal by placing reliance upon the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) and another (2015) 4 SCC 334.*** Learned counsel for the petitioner submits that the impugned order passed by the Tribunal has wrongly appreciated the settled principal of law.

3. Learned counsel appearing on behalf of respondents submits that the employees working under petitioner-BSNL had already retired from service and recovery was sought to be done by the petitioners after retirement of the respondents which fact has already been mentioned in paragraph 2 of the judgment and as per judgment of the Hon'ble Supreme Court of India in *Rafiq Masih (Supra)*, no recovery can be done from the retired employees and therefore, the impugned order passed by the Tribunal is perfectly valid and in consonance with the settled principle of law.

4. We have heard learned counsel for the parties and have gone through the records with their able assistance.

5. The settled principle of law with regard to the recovery by an employer of any excess amount paid to a retired employee has already been settled by Hon'ble Supreme Court of India in Rafiq Masih case (Supra). Relevant paragraph of the same are as under:

"12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. "Declaration of law" as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in Indian Bank v. Abs Marine Products (P) Ltd. (2006) 5 SCC 72, Ram Pravesh Singh v. State of Bihar (2006) 8 SCC 381 and in State of U.P v. Neeraj Awasthi (2006) 1 SCC 667 has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the quivive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court

that changes its complexion with the peculiarity in the facts and circumstances of the case."

6. A bare perusal of the above would show that no recovery can be done by the employer from the retired employees. The Tribunal, in para-2 of the impugned judgment has the date of the retirement of the retired employees as well as the date when excess amount got recovered from such employees which clearly shows that the recovery was sought to be done after the retirement of said employees which is impermissible as per settled principle of law.

7. Learned counsel for the petitioner has not been able to dispute the factual position that the recovery was done from respondents-employees after their retirement and the law on the said issue has already been settled by the Hon'ble Supreme Court of India, in Rafeeq Masih (Supra) that no such recovery can be done from such retired employees.

8. Learned counsel for the respondents have also submitted that a similar matter came up for consideration before this Court in CWP-17835-2024 which was disposed of by this Court in terms the judgment of the Hon'ble Supreme Court India in case of Rafiq Masih (Supra) and has been upheld by Hon'ble Supreme Court vide order dated 07.11.2025 passed in SLP (Civil) Diary No.45742 of 2025.

9. The only argument raised by learned counsel for the petitioner is that the amount which has been paid to the respondent was beyond their entitlement. Once, as per the settled principle of law, any excess amount paid cannot be recovered after the retirement, the said argument cannot be brought into operation to seek the refund of the excess amount paid. None

of the findings recorded by the Tribunal have been shown to be perverse either on facts or in law. Hence, no ground is made out to interfere with the order dated 06.12.2023, and the present writ petition is accordingly dismissed.

10. Pending applications, if any, stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

November 10, 2025
anil

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No