

HIGH COURT FOR THE STATE OF TELANGANA

* * * *

WRIT PETITION No.29093 of 2019

Between:

M.V.Rajeswara Rao

...Petitioner

And

State of Telangana
and two others

...Respondents

ORDER PRONOUNCED ON: 14.07.2023

THE HON'BLE SMT JUSTICE JUVVADI SRIDEVI

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes/No

JUVVADI SRIDEVI, J

*** THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

+ WRIT PETITION No.29093 of 2019

% Date: 14.07.2023

M.V.Rajeswara Rao

...Petitioner

VERSUS

\$ State of Telangana
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...Respondents

!Counsel for petitioner : Sri A.K.Jaya Prakash Rao

^Counsel for Respondent/s : Assistant Government Pleader for
Services-II

> HEAD NOTE:

? Cases referred

1. (2015) 4 SCC 334
2. (1994)2 SCC 521
3. (2006)11 SCC 709
4. (2009)3 SCC 475

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**WRIT PETITION No.29093 of 2019****ORDER:**

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner, wherein the following prayer is made:

".....call for the records from the Respondents and issue an appropriate Writ Order or Direction, particularly one in the nature of Writ of Mandamus declaring that the action of Respondents in recovering a sum of Rs.6,91,928/- from retirement benefits of the petitioner by obtaining letter under duress after lapse of five years and without issuing any charge sheet or conducting inquiry as illegal, unjust, contrary to law, arbitrary, in violation of principles of natural justice and violative of Articles 14, 16 and 21 of the Constitution of India and the petitioner is entitled to get back an amount of Rs.6,91.928/ from the respondents with costs and interest and all other consequential benefits."

[reproduced verbatim]

2. Heard Sri A.K.Jaya Prakash Rao, learned counsel for the petitioner and the learned Assistant Government Pleader for Services-II representing the respondents and perused the record.

3. Learned counsel for the petitioner would submit that the petitioner joined in the service of respondents as NMR on 01.12.1980 and his services were regularized as Helper Grade-I on 01.12.1981. Subsequently, the petitioner was promoted as Telephone Operator on 23.05.1992 and further promoted as Work Inspector Grade-IV with effect from 17.07.2004. The petitioner retired from service on attaining the age of superannuation on 31.07.2018. While so, the respondent No.3 issued proceedings, dated 12.08.2016 alleging that

there was erroneous pay fixation in the cadre of Helper to Work Inspector Grade-III with effect from 01.07.1986 and that if any excess payment is noticed due to erroneous pay fixation, the same would be recovered from the petitioner without any notice. The petitioner made a representation on 25.04.2017 to the respondents that his pay was not erroneously fixed and it was done according to the rules and regulations. However, the respondents calculated the amount which was allegedly excessively paid to the petitioner as Rs.6,91,928/-. The recovery started from 09.08.2017 to 31.07.2018 @ Rs.14,494/-. However, special grade increment was sanctioned to the petitioner in the month of April, 2018 and the respondents recovered a sum of Rs.2,17,110/- from the arrears payable to the petitioner and the balance amount of Rs.3,01,103/- was recovered from the leave encashment of the petitioner on his retirement. In fact, the respondent No.3 addressed a letter to respondent No.2 on 15.11.2018 categorically stating that there is no erroneous pay fixation arrears to be recovered from the petitioner. There are variations in the amount mentioned in the notices. Further, the petitioner never sought any pay fixation and it is the respondents who have fixed the pay of the petitioner on par with the other employees and as such, if any mistake is committed by the respondents in erroneously fixing the pay, the same is not attributable to the petitioner and the petitioner is no way responsible

for the same. The respondents have committed serious error in recovering the amounts after the retirement of the petitioner from the service. Relying on the judgment of the Hon'ble Apex Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others***¹, learned counsel for the petitioner would submit that recovery of amount paid in excess without fault of the recipient and the balancing of conflicting claims and hardship caused to the employee in case recovery is directed, is impermissible. Further, the petitioner belongs to Class III post and as such, no recovery can be made from him as per the decision of the Hon'ble Apex Court in ***Rafiq Masih's*** case (1 supra). Though the petitioner approached the respondents on several occasions requesting for refund of the amount and though the respondents assured him to look into the matter, no action was taken by the respondents. Further, though the petitioner got issued a legal notice on 10.11.2019 to the respondents calling upon them to refund an amount of Rs.6,91,928/- the respondents, having received the notice, did not reply to the same. The petitioner was victimized for no fault on his part. The entire action of the respondents in recovering the amount after his retirement without issuing any charge sheet and without conducting any enquiry is illegal, invalid and against the judgment of the Hon'ble Apex Court in ***Rafiq Masih's*** case (1 supra) and ultimately prayed to

¹ (2015) 4 SCC 334

allow the writ petition as prayed for.

4. The respondents filed counter along with a bunch of correspondence. It is submitted on behalf of the respondents that from the year 2008 to 2013, major misappropriation of Government money has taken place in NSC monitoring division, Tekulapally, Khammam District. The authorities tentatively arrived that an amount of Rs.69.00 lakhs of Government money was misappropriated. A criminal case was registered against the persons responsible for the same and the Government has handed over the investigation to CBCID. The case is still under investigation. Besides the CID enquiry, the Superintending Engineer, vide Memos dated 29.10.2013, 02.08.2016 and 06.08.2016, ordered rectification of erroneous pay fixation of the petitioner. The erroneous pay fixation arrears of Rs.6,91,928/- has been recovered from the salary bills of the petitioner with effect from September 2017 to 31.07.2018 @ Rs.14,494/- per month. Due to huge savings of the petitioner, erroneous amount could not be recovered during his service. The remaining amount of Rs.3,01,103/- was recovered from the balance earned leave of the petitioner. The balance earned leave encashment will be allowed after retirement of the petitioner. The petitioner got appointment by transfer to the post of Work Inspector, Grade-IV without requisite qualification of ITI. He was also further

promoted to the post of Work Inspector, Grade-III without requisite qualification. However, the petitioner has allowed the corresponding pay scale for Work Inspector, Grade IV and also allowed corresponding pay scales on subsequent PRCs from time to time. Further, during verification of the service book of the other similarly situated persons, erroneous pay fixation arrears were noticed and accordingly, the same was recovered from them. Since the petitioner was unduly benefitted by erroneous pay fixation, the respondents are justified in recovering the excess amount paid to the petitioner. In fact, the petitioner himself requested to recover the excess payment made to him from the balance earned leave or gratuity. Further, the petitioner did not submit any representation to the drawing officer to stop the recovery of excess paid salary before retirement. There are no justifiable grounds in this writ petition. The relief sought by the writ petitioner in this writ petition cannot be granted. The contentions raised on behalf of the petitioner are unsustainable and ultimately prayed to dismiss the writ petition.

5. In view of the above rival submissions, the point that arises for determination is:

"Whether the respondents are justified in recovering an amount of Rs.6,91,928/- from the retirement benefits of the petitioner?"

POINT:

6. While the case of the petitioner is that the respondents are not justified in recovering the arrears pertaining to erroneous pay fixation from his retirement benefits, the case of the respondents is that they are justified in doing so. A perusal of the material placed on record reveals that the petitioner herein was given monetary benefit in excess of his entitlement. The said benefit flowed to him consequent upon a mistake committed by the respondents. The mistake could have been occurred on account of variety of reasons, which includes, wrongful fixation of salary of the petitioner, consequent upon the upward revision of pay scales having been granted for which, the petitioner was not entitled. For whatever reason it may be, the petitioner was the beneficiary of the mistake committed by the employer and on account of said mistake, the petitioner received monetary benefit beyond his due.

7. An identical question came up before the Hon'ble Apex Court in **Rafiq Masih's** case (1 supra), wherein the Hon'ble Apex Court dealt with the matter in a great detail and held as follows:

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under

Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracized section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."

Thus, according to the Hon'ble Apex Court, orders passed by the State as employer seeking recovery of monetary benefits wrongly extended to the employees can only be interfered with, in

cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover; if the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper and more unwarranted than the corresponding right of the employer to recover the amount, then it would be under iniquitous and arbitrary, to effect the recovery and in such a situation, the employee's right would outbalance and therefore, eclipse the right of the state as employer to recover. In other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law.

8. In ***Shyam Babu Verma vs. Union of India***², which was referred in ***Rafiq Masih***'s case (1 supra), the Hon'ble Apex Court observed as under:

"Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

Thus, the Hon'ble Apex Court made it clear that recovery of excess amount paid to the petitioner due to the fault of the respondents is impermissible, the petitioners being in no way

² (1994)2 SCC 521

responsible for the same.

9. Further, in ***B.J.Akkara vs. Government of India***³, the

Hon'ble Apex Court held as follows: -

"28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

An identical question came up for consideration before the Hon'ble Apex Court in ***Syed Abdul Qadir vs. State of Bihar***⁴, wherein the Hon'ble Apex Court held as follows:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter- affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

³ (2006)11 SCC 709

⁴ (2009)3 SCC 475

Premised on the legal proposition considered above, it is apparent from the conclusions drawn in **Syed Abdul Qadir's** case (4 supra) that recovery of excess payments made from the employees who have retired from service or are close to their retirement would entail extremely harsh consequences, outweighing the monetary gains by the employer.

10. The Hon'ble Apex Court in **Rafiq Masih's** case (1 supra) summarized the following few situations, wherein, recoveries by the employers would be impermissible in law.

"(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

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

(iii) Recovery from 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, where 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."

11. In the instant case, the petitioner is no way concerned with the misappropriation of Government money alleged to have taken place in NSC monitoring division, Tekulapally, Khammam District. Further, the petitioner is not guilty of furnishing an incorrect information

which led the competent authority concerned to commit mistake of making higher payments to him. Further, the payment of higher amount to the petitioner was not on account of any misrepresentation made by the petitioner or was it on account of any fraud committed by him. Any kind of participation of the petitioner in the mistake committed by the respondents in extending unreserved monetary benefits is totally ruled out. It would, therefore, not be incorrect to record that the petitioner was an innocent person in the wrongful determination of his inflated amounts. Further, it has been categorically held by the Hon'ble Apex Court in **Rafiq Masih's** case (1 supra) that recovery from the retired employees, or the employees who are due to retire within one year from the date of retirement would be impermissible under law. In the instant case, admittedly, the petitioner retired from service on 31.07.2018. The respondents admitted in their counter that recovery has been effected during the service of the petitioner with effect from September, 2017 to 31.07.2018 @ Rs.14,494/- per month and an amount of Rs.3,01,103/- was recovered from the balance earned leave of the petitioner and an amount of Rs.2,17,110/- was recovered from the arrears payable to the petitioner. Thus, it is clear that all the recoveries were made from the petitioner, either after retirement of the petitioner or within one year from the date of retirement of the petitioner. Thus, the action

of the respondents in recovering the excess amount paid to the petitioner is against the dicta laid by the Hon'ble Apex Court in **Rafiq Masih's** case (1 supra).

12. Learned counsel for the respondents raised a contention that the petitioner himself requested to recover excess payment from the balance earned leave or gratuity and that the petitioner did not submit any representation to the drawing officer to stop the recovery of excess paid salary before his retirement. It is common knowledge that when a person is in service, he would certainly oblige the orders from the superiors inasmuch as the consequence of not obliging the said orders of the superiors may have adverse impact on his service. In the instant case, it is contention of the petitioner that the respondents have obtained a letter to recover the excess amount paid from the terminal benefits of the petitioner under duress. It is also averred by the petitioner that the respondents forcibly obtained his signature and recovered the said amount. Under these circumstances, this Court is of the considered view that the respondents obtained a letter from the petitioner to recover excessively paid amount while he was in service under duress.

13. Taking into consideration the facts and circumstances of the case and in view of the judgment of the Hon'ble Apex Court in **Rafiq**

Masih's case (1 supra), this Court is to the firm opinion that the action of the respondents in recovering an amount of Rs.6,91,928/- from the retirement benefits of the petitioner by obtaining a letter under duress after a lapse of five years is illegal, arbitrary and as such, it is a fit case to direct the respondents to refund an amount of Rs.6,91,928/- to the petitioner along with interest @ 12% per annum, apart from all other consequential benefits.

14. Resultantly, this Writ Petition is allowed declaring the action of respondents in recovering a sum of Rs.6,91,928/- from the retirement benefits of the petitioner by obtaining a letter under duress as illegal and arbitrary. The respondents are directed to refund an amount of Rs.6,91,928/- to the petitioner which was recovered from him, along with interest @ 12% per annum from the date of retirement of the petitioner till the date of actual payment and all other consequential benefits, within a period of six (6) weeks from the date of receipt of a copy of this order.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no orders as to costs.

JUVVADI SRIDEVI, J

Date: 14.07.2023

Note:
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