*** THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

AND

THE HON'BLE DR.JUSTICE G.RADHA RANI

+ WRIT PETITION Nos.15561, 13342, 15552, 16410, 16454, 18462, 18773, 18959, 19589, 19590 and 20708 OF 2021

% Dated 21-02-2022

Union of India, rep. by its Secretary,
Ministry of Communication, Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi – 110 001 & 4 others.

... Petitioners

$ G.Pramada Rani, W/o.G.Simha Reddy
Aged about 57 years, Occ:SA,
R/o.H.No.16-11-310/12/1,
Saleem Nagar Colony No.2
Malakpet, Hyderabad- 500036 & 10 others.

...Respondents

! Counsel for Petitioners: Sri Namavarapu Rajeshwar Rao,
Assistant Solicitor General of India

^ Counsel for respondent: Sri A.Raghu Kumar

<GIST:

> HEAD NOTE:

? Cases referred

1. 2016(14) SCC 267
2. (2015) 4 SCC 334

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BETWEEN

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COMMON ORDER: *(Per Justice P.Naveen Rao)*

The above Writ Petitions are filed by the petitioners seeking a 'Writ of Certiorari' calling for the records pertaining to the common order dated 25.02.2020, passed in O.A.Nos.591 of 2018 and batch, on the file of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, and quash the same as illegal and arbitrary.

(2) The Respondents herein are all employees of Department of Posts, Ministry of Communications, Union of India New Delhi. Sri Bhavanarayana, who was working as Senior Accountant in the Office of Directorate of Accounts (Postal), Nagpur, State of Maharashtra, sought transfer to the Directorate of Accounts (Posts), Hyderabad. His transfer was considered by reverting the person to a lower post of Junior Accountant with corresponding pay. Accordingly, Sri Bhavanarayana has joined as a Junior Accountant in Directorate of Accounts (Postal), Hyderabad, on 31.07.1990. He was later promoted as Senior

Accountant on 01.02.1995. He was granted Second Financial Upgradation under ACP (Assured Career Progression Scheme) on 10.06.2007. The employees working in Directorate of Accounts (Postal), Hyderabad, started claiming that their junior is drawing higher pay than them and therefore, their pay should be stepped up.

(3) It appears similar issues were raised in various States and in various Benches of the Central Administrative Tribunal. The dispute was considered and decided by the Tribunal. Based on the decision of the Tribunal, the pay of the respondents herein was stepped up on par with Sri Bhavanarayana with effect from 10.06.2007 and such pay was financed. The petitioners having realized that granting of stepping up of pay was erroneous and contrary to the scheme of Assured Career Progression (ACP) which was superceded by the Modified Assured Career Progression (MACP) Scheme and that the claim of the respondents for stepping up of their pay by comparing to the pay drawn by Sri Bhavanarayana, was not correct. Steps were taken to refix the pay and to recover the excess amount alleged to have been paid on account of the earlier wrong pay fixation.

(4) Vide letter dated 08.06.2018, recovery intimation was communicated to the respondents. The letter points out that

stepping up of pay allowed to the respondents in January 2016 was not valid as the pay of respondents at any point of time was not more than the pay of Sri Ch.Bhavanarayana prior to his ACP/MACP upgradation and therefore, a decision was taken to revise fixation and to order recovery. In a tabular form *vide* Ex.P5, the amount paid to the respondents and excess amount to be recovered, was also mentioned. Aggrieved by this recovery intimation letter, the batch of OA's are instituted before the Tribunal.

(5) The Hon'ble Tribunal vide judgment impugned herein, approved the decision of the petitioners to revise fixation and reduce the pay payable to the respondents, ordered not to resort to recover excess amount already paid on the ground that the respondents have not played fraud nor there was misrepresentation in getting the benefit.

(6.1) Learned Assistant Solicitor General contends that the Tribunal erred in staying the recovery. When excess amount was paid erroneously, the State as employer is entitled to correct the error and to recover the excess amount paid to the employees and therefore, merely because employees did not play fraud or misrepresentation, is no ground to withhold the recovery.

(6.2) Learned Assistant Solicitor General also contends that keeping the excess amount erroneously paid amounts to undue enrichment.

(6.3) He further submits that at the time of determination of higher pay fixation and payment of amount, the employees have given an undertaking (Ex.P26 in W.P.No.15561 of 2021 is one such undertaking) that in case of revision of pay fixation and if it was found that excess amount was paid, the petitioners are entitled to recover. Having agreed to recover the excess amount paid to them, it is no more open to respondent employees to challenge the order of recovery.

(7) Per contra, learned counsel for the respondents submits that though Bhavanarayana joined service earlier in his unit of appointment, he became junior to the respondents after his transfer to this unit and admittedly, he was drawing more pay than his seniors in the unit. Therefore, whenever a junior is drawing more pay, the seniors are entitled for stepping up of their pay on par with the junior. Having realized that junior was drawing more pay than the seniors, the pay fixation was revised and higher pay was granted to the respondents. Therefore, the re-fixation and recovery is erroneous.

(8) Learned counsel for the respondents would further submit that as can be seen from the internal correspondence, the Audit Officials admit that there was nothing wrong in granting higher pay fixation to respondents and therefore, revision of pay fixation and recovery is erroneous.

(9) It is not in dispute that order revising the earlier pay fixation and fixing the pay at a lower stage retrospectively and recovery of excess amount paid was challenged by the respondents. The Tribunal upheld the revision and the decision of the Tribunal to that extent has become final. The Tribunal only interfered with recovery of the excess amount paid on account of the erroneous stepping up of pay earlier granted to them. Challenging the decision of the Tribunal to the extent of staying the recovery only, these Writ Petitions are filed by the Union Government. Thus, it is no more open for the respondents to plead that the stepping up of pay could not have been revised.

(10) Therefore, the only issue for consideration is, whether the Tribunal erred in directing the petitioners not to resort to recover the excess amount already paid?

(11) No employee is entitled to retain an amount paid to him erroneously. It is his responsibility to remit the amount as soon as it is noticed that he was paid excess amount than his entitlement or due to wrong pay fixation. Having regard to the law laid down by the Hon'ble Supreme Court, this issue is no more *res-integra* and need not detain this Court any further.

(12) Issue of recovery of excess amount paid to employees was considered by the Hon'ble Supreme Court in **State of Punjab Vs.Rafiq Masih [(2015) 4 SCC 334]**. After considering the precedent decisions, the Hon'ble Supreme Court laid down the parameters to deal with issue of recovery whenever the employer realized that by mistake excess amount was paid to the employee and seeks to recover the excess amount.

(12.1) Para 12 of the judgment reads as under:

> "12. 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, summarize 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."

(12.2) None of the principles carved out by the Hon'ble Supreme Court in paragraph 12 are attracted to the cases on hand.

(12.3) Para 7 of the judgment reads as under:

> "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."

(13) In the judgment rendered by the Hon'ble Supreme Court in **High Court of Punjab and Haryana Vs.Jagdev Singh** reported in **2016(14) SCC 267**, again this issue has come up for consideration. The Hon'ble Supreme Court concurred with the principles carved out by the Supreme Court in the **State of Punjab Vs. Rafiq Masih (2015) 4 SCC 334.**

(13.1) The Hon'ble Supreme Court having noticed that the officer therein to whom excess payment was made in the first instance gave an undertaking authorizing to recover any excess payment may have been made, held that the officer is bound by the undertaking and recovery cannot be objected.

(14) Thus, when employee authorizes to recover excess amount paid, he is bound by the undertaking. In the instant case also, admittedly, when stepping up of pay was granted, all the respondents have given an undertaking authorizing the employer to recover any excess amount paid to them and they are bound by the said undertaking.

(15) In view of the judgment of the Hon'ble Supreme Court in **Jagdev Singh,** the order of the Tribunal is not sustainable and is accordingly set-aside. Accordingly, the Writ Petitions are allowed. Miscellaneous petitions, if any pending, shall stand closed. No order as to costs. It is open to the petitioners to recover the excess amounts paid after erroneous pay fixation if not already recovered or not adjusted. However, if the petitioners resort to recover the amount, the petitioners are directed to recover the amounts in equitable installments spread

over reasonable period of time depending on the amount to be recovered and/or balance service left to the employees.

JUSTICE P.NAVEEN RAO

DR.JUSTICE G.RADHA RANI

Date:21.02.2022

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