

(2016) 06 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 6978 of 2010

Union of India

APPELLANT

Vs

Shri Nasiruddin Sadruddin

RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2016) 4 ALLMR 417 : (2016) 6 SLR 34

Hon'ble Judges : V.M. Kanade and M.S. Sonak, JJ.

Bench : Division Bench

Advocate : Mr. Suresh Kumar a/w D. A. Dube appears, Advocate, for the Appellant; None appears, for the Respondent

Final Decision : Dismissed

Judgement

V. M. Kanade, J. (Oral) - The Union of India has filed this petition under Article 226 of the Constitution of India, challenging the order passed by the Hon'ble Central Administrative Tribunal in Original Application No. 51 of 2009 filed by the Respondent, restraining the Petitioners herein to recover the excess amount mistakenly paid and to refund a small portion of the amount already recovered from the Respondent with simple interest.

2. Brief facts are that the Applicant was working as Artisan Grade-III with the Respondent. The Railway Board took a policy decision regarding up-gradation of certain posts by order dated 28th September, 1998. Accordingly, he was up-graded to the post of Artisan Grade III with effect from 1st September, 1998. It is not in dispute that the up-graded pay scale was to be granted on their passing prescribed Trade Test within reasonable time. The Applicant passed the prescribed examination on 4.8.2000. Recovery proceedings were initiated against the Respondent for recovering the difference of salary paid to him on his up-gradation i.e. from 1.9.1998 to 4.8.2000. The contention of the respondent was not that he had not committed fraud and has not made any misrepresentation and the said payment was made by the Railway Authorities. The Central

Administrative Tribunal by referring the law laid down by the Supreme Court in several cases and more particularly, a law laid down by the Apex Court, summarising the whole law on the subject in the case of Col. BJ Akkara (Retd) v. Government of India & Others [2007 (1) SCC (L&S) 529], came to the conclusion that since it was established that the Respondent had not committed any fraud or made any misrepresentation, recovery could not have been made from the employee.

3. In the peculiar facts and circumstances of the present case, we do not see any reason to interfere with the impugned order made by the Central Administrative Tribunal (CAT). The record bears out that the Respondent was holding the post of Artisan (Tech), which is a Grade-III post. The CAT has noted that the Respondent was in no manner a party to or responsible for benefit of up-gradation from 1.9.1998 instead of 4.8.2000. The excess amount paid to the Respondent during the said period works out to hardly Rs.10, 928/-. The recovery of this amount after period of over six years would undoubtedly bring about an iniquitous situation as held by the Hon''ble Supreme Court in case of Shyam Babu Verma Others v. Union of India and others - 1994 (27) ATC 121 and Col. BJ Akkara (Retd.) (supra).

4. Incidentally, the Hon''ble Supreme Court in State of Punjab & Ors. v. Rafiq Masih (White Washer) and Ors. (2015) 4 SCC 334, relying upon its decisions in case of Shyam Verma (supra) and Col BJ Akkara (supra), has postulated some situation of hardship which could govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. At paragraph "18", the Hon''ble Supreme Court has observed thus:

"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) Recovery from the employees belonging to Class III and 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, 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 or recover."

5. We are satisfied that the case of the Respondent is covered by the situations of hardship postulated by the Hon''ble Supreme Court in case of Rafiq Masih (supra), and therefore, there is no case made out to interfere with the impugned order made by the CAT. The circumstances that the Respondent is a Grade-III employee; that the recovery was attempted after period of six years and the excess amount is hardly Rs.10,928/-, are also circumstances sufficient to decline the exercise of our writ jurisdiction under Articles 226 and 227 of the Constitution of India.

6. Accordingly, this petition is dismissed. Rule is discharged. There shall be no order as to costs.