

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Tuesday 30th day of October Two Thousand And Eighteen

PRESENT:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)
THE HON'BLE MR. P. MADHAVAN, MEMBER (J)

O.A./310/1693/2016
&
MA/310/660/2016
In
O.A./310/1693/2016

S. Parthasarathy,
Stenographer Grade.I (Retd.)
Doordarshan Kendra,
Chennai-5.Applicant

(By Advocate : M/s. Paul & Paul)

VS.

1. Union of India Rep. by
Secretary,
Ministry of Information & Broadcasting,
A wing, Shastri Bhavan,
New Delhi- 110 001;
2. The Director General,
Doordarshan, Doordarshan Bhavan,
Copernicus Marg,
New Delhi- 110 001;
3. The Deputy Director General (F),
Doordarshan Kendra,
Chepauk, Chennai- 600 005;
4. Pay & Accounts Officer,
Doordarshan Kendra,
Chepauk,
Chennai- 600 005.Respondents

(By Advocate: Mr. C. Kulanthaivel)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

Heard. This OA is filed by the applicant seeking the following reliefs:-

"a) for quashing of the order F.No.Misc.1/330/2012-PPC dated 31.12.2015 of the 2nd respondent and impugned Pay revision order dated 20.09.2016 as illegal and void; and
 b) for a consequential direction to the respondents to restore the pay of the applicant as originally fixed in terms of the 2nd respondent's letter dated 03.10.2012."

2. Learned counsel for the applicant would submit at the outset that the applicant did not wish to press his claim against re-fixation of pay following revision of pay scales on the basis of the option exercised by him leading to the issue of the impugned order. However, as a retired class III employee, he would seek the benefit of the order of the Hon'ble Apex Court in State of Punjab & Ors. Vs. Rafiq Masih (White Washer) case reported in (2015) 4 SCC 334 dated 18.12.2014. It is submitted that the claim of the applicant against recovery of the amounts paid in excess had not been processed in terms of the law laid down in the said case and Office Memorandum dated 2.3.2016 of the Department of Personnel & Training (DOP&T) issued in acceptance thereof and directing all concerned to submit the cases of waiver of recovery for decision in consultation with the Department of Expenditure. Accordingly, the applicant would be satisfied if the competent authority is directed to process his claim against recovery in terms of the said DOP&T OM dated 2.3.2016.

3. Learned counsel for the respondents would, however, draw attention to the judgment of the Hon'ble Apex Court in the case of High Court of Punjab & Haryana & Ors. v. Jagdev Singh in Civil Appeal No. 3500 of 2006 dated 29.07.2016 wherein it had been observed that the principle enunciated in State of Punjab & Ors. vs. Rafiq Masih (Whiter Washer) case in respect of recovery from retired employees or employees who are due to retire within one year of the order of recovery could not be applied to a situation such as in the said case. It was stated that in the said case, the

officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking to this effect while opting for the revised pay scales and was bound by such undertaking. It is accordingly submitted that since the applicant in the instant case had also signed an undertaking while opting for the revision of pay scales, the White Washer case could not be invoked and the respondents were right in executing the recovery against the applicant.

4. We have considered the submissions. It is not in dispute that the DOP&T, in acceptance of the judgment of the Hon'ble Apex Court in the case of State of Punjab & Ors. vs. Rafiq Masih (Whiter Washer), had issued OM dated 2.3.2016 which requires all such cases of alleged excess payments to be processed in terms thereof and wherever waiver of recovery in situations such as the ones mentioned in the White Washer case was considered, the same may be allowed with the express approval of the Department of Expenditure. Admittedly, the applicant's case had not been processed thereunder.

5. Further, a perusal of the order of the Hon'ble Apex Court in the case of High Court of Punjab & Haryana & Ors v. Jagdev Singh in Civil Appeal No. 3500/2016 dated 29.07.2016, cited supra would show that the Hon'ble Supreme Court had made the observations in respect of a Civil Judge, who was not a Class-III and Class -IV employee. As the Hon'ble Apex Court had made its observations regarding the undertaking given by the employee in category (ii) of the citation referred to therein which pertained to "recovery from retired employees, or employees who are due to retire within one year, of the order of recovery" and not a situation mentioned against category (i) that related to "recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service'), we are of the view that the ratio of State of Punjab & Ors. vs. Rafiq Masih (Whiter Washer) case would

be applicable to the applicant's case and not the case relied upon by the respondents unless the applicant is regarded as a Class II officer.

6. It is also not in dispute that DOP&T has not made any amendment to its OM dated 2.3.2016 following the said judgment of the Hon'ble Apex Court in the case of High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh in Civil Appeal No. 3500/2006 dated 29.07.2016. Accordingly, we deem it appropriate to direct the respondents to process the claim of the applicant in terms of the DOP&T O.M dated 2.3.2016 and pass a reasoned and speaking order within a period of three months from the date of receipt of copy of this order.

7. OA is disposed of in the above terms. MA for direction to the respondents to release his retirement benefit in terms of the decision of the Hon'ble Supreme Court in State of Punjab & Ors. vs. Rafiq Masih (Whiter Washer) without any deduction stands disposed of accordingly. No costs.

(P. MADHAVAN)
MEMBER(J)

(R. RAMANUJAM)
MEMBER(A)

asvs.

30.10.2018