

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01283/2018

DATED THIS THE 14TH DAY OF AUGUST, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

B.N. Mohan,
S/o Sri Late. Neelakanta,
Aged about 56 years,
Deputy Secretary (Tech),
Central Office,
Central Silk Board, Bangalore 68
Residing at No. 10 & 11, Flat – FA,
Matha Tanisha Apartments,
4th Cross, 4th Main, KSRTC Layout,
Chikkallasandra, Bangalore 560 061 Applicant
(By Advocates Shri K. Keshava & Shri K. Sreeram)

Vs.

1. The Member Secretary Central Silk Board,
Ministry of Textiles, Govt. of India,
CSB Complex, 5th Floor, BTM Layout,
Bangalore 560 068

2. The Joint Director (Admn),
 Central Silk Board,
 Ministry of Textiles, Govt. of India,
 CSB Complex, 5th Floor, BTM Layout,
 Bangalore 560 068

3. The Director (Finance),
 Ministry of Textiles, Govt. of India,
 CSB Complex, 5th Floor, BTM Layout,
 Bangalore 560 068

....Respondents

(By Shri Vishnu Bhat, Counsel for the Respondents and
 Shri S. Sugumaran, Counsel for Respondent No. 1)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

The matter seems to be covered by Office Memorandum F.No. 18/03/2015-Estt. (Pay-I) dated 02.03.2016 which we quote:

“F.No. 18/03/2015-Estt. (Pay-I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 2nd March, 2016

OFFICE MEMORANDUM

Sub: Recovery of wrongful / excess payments made to Government servants.

The undersigned is directed to refer to this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014 wherein certain instructions have been issued to deal with the issue of recovery of wrongful / excess payments made to Government servants in view of the law declared by Courts, particularly, in the case of Chandi Prasad Uniyal And Ors. vs. State of Uttarakhand And ors., 2012 AIR SCW 4 742, (2012) 8 SCC 417. Para 3(iv) of the OM inter-alia provides that recovery should be made in all cases of overpayment barring few exceptions of extreme hardships.

2. The issue has subsequently come up for consideration before the Hon'ble Supreme Court in the case of State of Punjab & Ors vs Rafiq Masih (White Washer) etc in CA No.1152 7 of 2014 (Arising out of SLP(C) No.11684 of 2012) wherein Hon'ble Court on 18.12.2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information / misrepresentation fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments. The Hon'ble Supreme Court in its judgment dated 18th December, 2014 *ibid* has, *inter-alia*, observed 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. 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."

"10. In view of the aforesated 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.”

3. *The issue that was required to be adjudicated by the Hon’ble Supreme Court was whether all the private respondents, against whom an order-of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by them thereafter, the ingredients depicted in paras 2& 3 of the judgment are essentially indispensable.*

4. *The Hon’ble Supreme Court while observing that 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 has 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.

5. *The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014.*

6. *In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued with the concurrence of the Comptroller and Auditor General of India.*

7. *Hindi version will follow.*

(A.K. Jain)
Deputy Secretary to the Government of India"

2. Therefore, under clause 4 (iii) it appears that when a matter had been pending for more than 5 years then it cannot be recovered. Therefore, as the amount allegedly sought to be recovered has a genesis in 2011, it cannot be sought to be recovered by an order in 2018. Therefore, the recovery is hereby quashed.

3. The OA is allowed to this extent. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01283/2018

Annexure A1 Copy of the memorandum dated 01.06.2011

Annexure A2 Copy of the office order dated 13.07.2011

Annexure A3 Copy of the office order dated 17.10.2011

Annexure A4 Copy of the office order dated 14.11.2011

Annexure A5 Copy of the memorandum dated 02.03.2016

Annexure A6 Copy of the corrigendum dated 06.07.2018

Annexure A7 Copy of the representation dated 17.07.2018

Annexures referred in reply statement

Annexure R1 Copy of the CSB letter dated 08.05.2017

Annexure R2 Copy of the Ministry of Textiles letter dated 30.01.2018

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