

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)**

**THURSDAY, THE FOURTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT PETITION No.23400 OF 2022

Between:

Dr. Raghuvir Prasad Mathur, S/o late Ishwari Prasad Mathur, 61 years, Occ: Retired Scientist G, DMRL, M/o Defense, R & D Org R/o Flat 405, Balaji Nest, Near Johnson School, Balaji Nagar Mansoorabad, Ranga Reddy District - 500 068.

...PETITIONER

AND

1. The Union of India, Rep. by its Secretary, Ministry of Defense, Department of Defense Research and Development DRDO HQ. DRDO Bhawan, Rajaji Marg, New Delhi.
2. The Director, Defense Metallurgical Research Laboratory (DMRL), Kanchan Bagh, Hyderabad 500 -058.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an order or direction more particularly in the nature of Writ of Certiorari, calling for the records pertaining to order dated 08/10/2021 in O.A. No. 376 of 2020 and orders in RA. No. 12 of 2021 dated 06/01/2022 on the, file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal arbitrary contrary to law and further prayed that the recovery made from the salary of the petitioner without giving any opportunity is bad and illegal.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to release the recovered amount by suspending the operation of the order dated 08/10/2021 in O A No 376 of 2020 and RA No.12 of 2021 dated 06/01/2022 on the file the Honourable Central Administrative Tribunal, Hyderabad Bench, Hyderabad pending disposal of the Writ Petition.

**Counsel for the Petitioner: SRI PONNAM ASHOK GOUD REPRESENTING
SRI PONNAM MAHESH BABU**

**Counsel for the Respondents: M/s. B. KAVITHA YADAV,
S.C. FOR CENTRAL GOVERNMENT**

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

Writ Petition No.23400 of 2022

ORDER : *(Per the Hon'ble Sri Justice Abhinand Kumar Shavili)*

Aggrieved by the order dated 08.10.2021 passed in O.A.No.376 of 2020 and also the order dated 06.01.2022 passed in R.A.No.12 of 2021, by the Central Administrative Tribunal, Hyderabad (for short 'the Tribunal), the present Writ Petition is filed.

2. Heard Sri Ponnamm Ashok Goud, learned counsel, representing Sri P. Mahesh Babu, learned counsel appearing for the petitioner and Smt. B. Kavitha Yadav, learned Standing Counsel appearing for the respondents.

3. It is the case of the petitioner that he is a retired Scientist-G. The respondents have paid transport allowance to him during the year 2013 and the same was continued up to June, 2020. However, the respondents have issued proceedings in the month of June, 2020, wherein an amount of Rs.58,067/- per

month was sought to be recovered from the petitioner on the ground that he was erroneously paid the transport allowance, which is contrary to the Office Memorandum dated 02.03.2016. Thereafter, the respondents have withheld excess amount paid to the petitioner, which is contrary to the law laid down by the Apex Court in ***State Of Punjab & Others v. Rafiq Masih (White Washer) and others***¹. Aggrieved by the action of the respondents in recovering the excess amount paid to the petitioner, the petitioner has approached the Tribunal by filing O.A.No.376 of 2020. Without appreciating any of the contentions raised by the petitioner, the Tribunal *vide* order dated 08.10.2021 dismissed the said O.A. Thereafter, the petitioner had filed Review Application No.12 of 2021 and the same was also dismissed by the Tribunal *vide* order dated 06.01.2022. Aggrieved by the said orders, the present writ petition is filed.

4. Learned counsel appearing for the petitioner had contended that the respondents have extended

¹ 2015 (4) SCC 334

transport allowance to the petitioner during the year 2013 and the same was continued up to 2020 and recovery was sought to be made just before one year of retirement of the petitioner and the excess amount was also paid over and above five years. This issue was considered by the Apex Court in **Rafiq Masih's** case (supra), wherein it was held that recovery from the retired employees or employees who are due to retire, within a period of one year cannot be recovered and if the amounts were paid in excess of five years also cannot be recovered. Learned counsel had further contended that in the instant case, the respondents have paid transport allowance in excess of five years and were trying to recover the amounts just before retirement of the petitioner and the issue raised in the present writ petition is covered by the judgment of the Apex Court in **Rafiq Masih's** case (supra). Therefore, appropriate orders be passed in the writ petition by setting aside the orders passed by the Tribunal in O.A.No.376 of 2020, dated 08.10.2021 and R.A.No.12 of 2021, dated 06.01.2022 and further direct the

respondents to refund the excess amount recovered from the petitioner.

5. On the other hand, learned Standing Counsel appearing for respondents had contended that the Tribunal has rightly dismissed the said O.A., as excess amount was paid to the petitioner, which is contrary to the Office Memorandum dated 02.03.2016 and the same is also not challenged by the petitioner. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

6. This Court, having considered the rival submissions made by the parties, is of the view that the issue raised in the writ petition is squarely covered by the judgment rendered by the Apex Court in **Rafiq Masih's** case (supra). Admittedly, in the instant case, the respondents have paid the transport allowance to the petitioner in excess of five years and the respondents were trying to recover the excess amount just before his retirement and these situations were dealt with by the Apex Court in **Rafiq Masih's** case

(supra) and the Tribunal was not justified in dismissing the O.A. Therefore, the orders passed by the Tribunal in O.A.No.376 of 2020, dated 08.10.2021 and R.A.No.12 of 2021, dated 06.01.2022 are liable to be set aside.

7. Accordingly, the Writ Petition is allowed by setting aside the orders passed by the Tribunal in O.A.No.376 of 2020, dated 08.10.2021 and R.A.No.12 of 2021, dated 06.01.2022. The respondents are directed to release withheld amount to the petitioner. No costs.

8. As a sequel, miscellaneous applications pending if any, shall stand closed.

SD/- P. CH. NAGABHUSHAMBA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

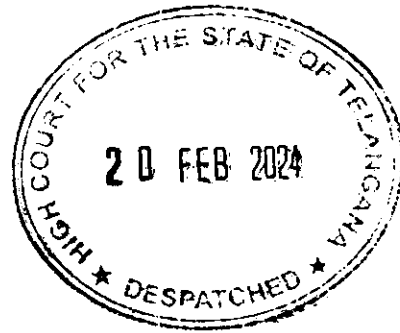
1. The Secretary, Ministry of Defense, Department of Defense Research and Development DRDO HQ. DRDO Bhawan, Union of India AND ANOTHER, Rajaji Marg, New Delhi.
2. The Director, Defense Metallurgical Research Laboratory (DMRL), Kanchan Bagh, Hyderabad 500 -058.
3. One CC to SRI PONNAM MAHESH BABU, Advocate [OPUC]
4. One CC to M/s. B. KAVITHA YADAV, S.C. for Central Government [OPUC]
5. Two CD Copies

MP
GJ



HIGH COURT

DATED:04/01/2024



ORDER

WP.No.23400 of 2022

**ALLOWING THE WRIT PETITION
WITHOUT COSTS**

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GBL

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