

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 7837/2002**

% *Date of Judgment: 24th November, 2016*

UNION OF INDIA & ANR. Petitioners

Through: Mr. Jaswinder Singh, Advocate.

Versus

D.C. MURMU

.... Respondent

Through: Mr. S.C. Soren, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. Rule DB was issued in this matter on 20.07.2004.
2. The challenge in this writ petition is to the orders dated 08.02.2002 and 11.09.2002 passed by Central Administrative Tribunal (briefly the '*Tribunal*'). Before we notice the facts of the case and the rival submissions made by the learned counsel for the parties; we may notice that the respondent has since retired from the service. It may further be noted that the quantum involved in the present writ petition is Rs. 23,800/-, which stands paid to the respondent on 18.10.2002.
3. In this case, the respondent had approached the Tribunal primarily seeking two reliefs:
 - (i) Promotion; and
 - (ii) Non-payment of special allowances.

4. The relief with regard to promotion stands rejected by the Tribunal and the decision stands accepted by the respondent. On the other ground, the Tribunal has allowed the O.A. and held that since the respondent was performing the duties of a Tradesmen Grade-I, he was entitled to officiating pay for the post as he had shouldered higher responsibilities. The Tribunal had placed reliance upon the judgment of the Supreme Court in *Democratic Rights v. Union of India, 1982 (3) SCC 235*.
5. Learned counsel for petitioner submits that the Tribunal has failed to take into consideration that the respondent was holding the post of Assistant Grade-II (Fork Lift Operator) in the scale of Rs.3050-4590 in the office of the respondent and his post is a non-technical post. He was deployed on operation at the coining press, which is assigned to both Tradesmen and Non-Tradesman, working as Assistant Grade-III (Rs.2650-4000), Assistant Grade-II (Rs.3050-4590) and Assistant Grade-I and Junior Technical (Rs.4000-6000), which are lower, equivalent and higher to the post of the respondent herein, who was Assistant Grade-II in the scale of Rs.3050-4590.
6. The submission of Mr. Jaswinder Singh, counsel for petitioner, is thus, that the operation of coining press is not related to any particular grade, post or trade and no extra remuneration or honorarium is being paid to any worker engaged in the same. He submits that a list of workmen (Tradesmen and Non-Tradesmen) possessing the post lower or equivalent than the respondent and are engaged on operation of the coining press had been filed before the Tribunal.

7. Learned counsel for the petitioner submits that although the amount involved is only Rs. 23,800/-, but similar situated persons may also claim such relief, which would cause prejudice to the rights of the petitioner. It is submitted that after the impugned order was passed, the petitioner had sought review, which was summarily rejected without looking into the questions raised by the petitioner.
8. Learned counsel for respondent submits that the respondent has retired and the amount stands credited to his account and once the respondent having retired the amount cannot be recovered from him. Reliance is placed on, ***State of Punjab & Others v. Rafiq Masih (White Washer) & Others, (2015) 4 SCC 334*** in respect of his submission that the recovery from the retired employees and employees, who are due to retire within one year, the order of recovery should not be carried out.
9. We have heard the learned counsel for the parties and considered their rival submissions.
10. The submissions, which are sought to be raised by the learned counsel for the petitioner do not find noticed in the impugned order and we are not inclined to entertain fresh grounds in these proceedings. Mr. Jaswinder Singh submits that the grounds sought to be urged before this court were also raised in the review application, but the same were not considered.
11. In ***Rafiq Masih (Supra)***, the Supreme Court enumerated circumstances when recovery cannot be effected against employees. The Supreme Court had summarized the situations as under:

“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 hereinabove, 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 to recover.”

(Emphasis Supplied)

12. In the present case, the Tribunal was persuaded to allow the O.A. on the ground as stated in paras 4 and 5 of the order dated 08.02.2002, which read as under: -

“4. In our considered view, once the respondents have assigned the duties of Machine Operator to the applicant he continued to perform the same having requisite qualification of technical job, he cannot be deprived of the officiating pay for the post as he has shouldered higher responsibility. Respondents should have taken off the applicant from technical duties and have assigned

him duty as per his eligibility and qualification. As a non-trade man there is no question of technical duties to be performed by the applicant.

5. In this view of the matter, we direct the respondents to pay to the applicant officiating pay for the period from October, 1996 till he has performed the duties of technical nature within a period of 3 months from the date of receipt of a copy of this order with all consequential benefits. It is, however, open to the respondents to take off the applicant from performing such duties in accordance with law. OA is disposed of accordingly. No costs.”

(Emphasis Supplied)

13. Having regard to the peculiar facts of the case and taking into account that the issue pertains to a period between the years 1996 to 2002, the respondent having been retired, amount involved being very meagre, we are not inclined to interfere with the order passed by the Tribunal. However, the question of law raised by the petitioner is kept open and the decision would not be treated as a precedent.
14. The writ petition is disposed of in above terms.

G. S. SISTANI, J.

VINOD GOEL, J.

NOVEMBER 24, 2016

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