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

+ **W.P.(C) 6428/2017 & C.M. No.26609-10/2017**

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Mr. L.K. Passi and Ravi Kumar, Adv.

versus

NEELAM

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

28.07.2017

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The petitioner had preferred the present writ petition to assail the order dated 22.05.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in OA No.3523/2016. The tribunal has allowed the said OA preferred by the respondent and stopped the recovery of overpayment of Rs.1,02,293/- made to him made by the petitioner DTC on account of erroneous fixation of pay on grant of third financial upgradation on 08.06.2013. The petitioner vide order dated 29.08.2016 sought to make the said recovery. Accordingly, the respondent preferred the aforesaid OA by placing reliance on the decision of the Supreme Court in *State of Punjab & Ors. v. Rafiq Masih (Whitewasher) & Ors.*, 2014 (14) Scale 300.

The Supreme Court in this decision has enumerated several situations, wherein recovery of excess payments made to the employee - on account of erroneous acts/omissions and the decision taken by the employer, and where the employee is not accused of misrepresentation or fraud, should not be permitted. In the impugned order, the tribunal has observed as follows:

“2. I have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given my thoughtful consideration to the matter.

3. Learned counsel for the respondent fairly concedes the claim of the applicant. 4. Paragraph 18 of the aforesaid judgment of the Hon’ble Supreme Court is reproduced hereinunder:

“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."

5. Obviously, the case of the applicant, due to superannuate on 31.05.2017, is covered under the first and second categories delineated hereinabove and the impugned order (Annexure A-1) to the extent it orders recovery of 'excess payment' from the salary of the applicant deserves to be and is hereby quashed."

The aforesaid extract would show that, firstly, the petitioner conceded the claim of the respondent. Secondly, the petitioner does not dispute the fact that the case of the respondent is covered by the first two categories, namely, that he belonged to Group-C service and he was due to retire within one year of the order of recovery.

In these circumstances, we find absolutely no merit in this petition.
Dismissed.

Dasti.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 28, 2017

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