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

+ **W.P.(C) 688/2018 & C.M. No. 2948/2018**

ISHWAR SINGH Petitioner
Through: Mr.R.A. Sharma, Adv.

versus

**DELHI STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD & ORS** Respondents
Through: Mr.Gaurang Kanth, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **09.10.2018**

1. The petitioner has challenged an order dated 10.10.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi dismissing OA No.689/2017 filed by him praying *inter alia* for quashing and setting aside order dated 13.02.2017 passed by the respondents/DSIIDC directing recovery of a sum of Rs.1,04,500/- on the ground that the same had been erroneously paid to him on account of Child Education Allowance (in short 'CEA'), for the year 2010-2011 to 2013-2014. Further, the petitioner seeks directions to the respondents to refund the amount of CEA already recovered from his salary.

2. In a nutshell, the facts of the case are that the petitioner was

appointed as a Junior Engineer (JE) (Civil) in the respondents/DSI IDC on an adhoc basis on 17.08.1998. He was regularized on the said post with effect from 23.10.2015, vide order dated 29.10.2015. During the years 2010-2011 to 2013-2014, the respondents paid the petitioner a sum of Rs.1,14,000/- towards Child Education Allowance (CEA) for his two children, as detailed in para 3 of the Original Application.

3. Without putting the petitioner to any notice, the respondents/DSI IDC issued an order dated 29.02.2016 and started recovering a sum of Rs.4750/- per month from his salary w.e.f. March, 2016. The said action was challenged by the petitioner by approaching the Tribunal and filing OA No.1378/2016.

4. The main grievance raised in the said OA was that the respondents had passed an ex-parte order dated 29.02.2016 directing recoveries from the petitioner's salary, without issuing him a notice to show cause and without affording him any opportunity of hearing. Vide order dated 19.09.2016, the Tribunal disposed of the captioned OA with directions to the respondents/DSI IDC to issue a notice to show cause to the petitioner and pass a final order after taking a final view in the matter.

5. Thereafter, the respondents/DSI IDC issued a notice to show cause dated 23.11.2016 to the petitioner soliciting his comments as to why a sum of Rs.1,04,500/- erroneously paid to him on account of CEA for the years 2010-2011 to 2013-2014, should not be recovered

from him. Vide his representation dated 15.12.2016, the petitioner submitted his explanation to the competent authority which was found unsatisfactory and the Competent Authority directed recovery of a sum of Rs.1,04,500/- from his salary on a monthly installment basis. Aggrieved by the said order, the petitioner once again approached the Tribunal by filing OA No.689/2017.

6. Learned counsel for the petitioner stated before the Tribunal that the petitioner was entitled to reimbursement of CEA for his two children in terms of OM dated 02.09.2008, issued by the Government of India, since at the relevant point of time, the petitioner was working on a post that had a resemblance to a permanent post and he could not be denied the benefit of CEA, as was admissible to a permanent employee. It was also urged before the Tribunal that the respondents/DSIIDC was paying CEA to several other adhoc employees and therefore, there was no reason to recover the same from the petitioner.

7. The aforesaid position was countered by learned counsel for the respondents who stated before the Tribunal that the recovery had been rightly ordered for the period during which the petitioner was not a regular employee. The petitioner was only regularized w.e.f. 23.10.2015 and any payments made to him towards CEA before his regularization, was invalid. Further, OM dated 23.03.2006 was sought to be relied upon by learned counsel for the respondents/DSIIDC in support of his submission that CEA,

reimbursement of tuition fee and hostel subsidy was payable only to a permanent Central Government employee and not to those who are engaged on daily wages or on an adhoc basis.

8. After hearing the arguments advanced by learned counsel for the parties, the Tribunal opined that the appointment letter of the petitioner itself indicated that he was an adhoc employee till he was regularized in the year 2015 and that being the position, he could not be held entitled to CEA during the relevant period. Referring to OM dated 23.03.2006, the Tribunal observed that persons appointed on adhoc basis, were not eligible for CEA and other such benefits. As a result, the order dated 13.02.2017 passed by the respondents/DSI IDC directing recoveries from the petitioner, was upheld on the ground that it was a *bona fide* mistake committed by the respondents.

9. Aggrieved by the order dated 10.10.2017, the petitioner filed a review application (RA No.230/2017) which was also dismissed by the Tribunal vide order dated 27.11.2017. Thereafter, the present petition came to be filed by the petitioner.

10. Mr.Sharma, learned counsel for the petitioner submits that the petitioner had worked uninterruptedly on the post of JE(Civil) for over a period of 17 years, from 22.08.1998 to 29.10.2015 and thereafter, he was regularized without a break in service, which itself indicates that the petitioner was working on a regular basis with the respondents/DSI IDC. Secondly, it is contended that OM dated 23.03.2006, cited by counsel for the respondents has been wrongly

relied on by the Tribunal as it is the subsequent OM dated 02.09.2008, issued by the DoP&T which covers the case of the petitioner for grant of the benefit of the Child Education Allowance Scheme. Lastly, learned counsel relies on the decision of the Supreme Court in *State of Punjab vs. Rafiq Masih*, [2015(2) SCC 151], to state that the petitioner being a holder of a Group 'C' post, no recoveries could have been made from him on account of erroneous payments, if any, released by the respondents./DSIIDC.

11. Per contra, Mr.Kanth, learned counsel for the respondents supports the impugned judgment and states that the respondents cannot be faulted for directing recoveries of amounts erroneously released in favour of the petitioner towards Child Education Allowance when admittedly, he was working on the post of Junior Engineer (Civil) on an adhoc basis during the relevant years i.e. 2010-2011 to 2013-2014. He further states that the Tribunal was justified in relying upon OM dated 23.03.2006, which disentitles the petitioner for grant of CEA during the aforesaid period. Without prejudice to the aforesaid submission, learned counsel states that even the subsequent OM dated 02.09.2008, issued by the DoP&T does not change the eligibility conditions for grant of CEA as were laid down in OM dated 23.03.2006, which fact would be apparent on a perusal of the said OM itself.

12. Having heard learned counsel for the parties and on examining the records in the light of the view expressed by the Tribunal, we are of the opinion that irrespective of whether the petitioner was an adhoc

employee at the relevant point of time or not, he cannot be blamed for release of the CEA in his favour and it was not at his request that the said amount had been released. Rather the respondents/DSIIDC had on its own paid the CEA to the petitioner, for his two children. It is also not in dispute that though the petitioner was appointed on an adhoc basis on the post of a Junior Engineer (Civil) on 17.08.1998, he was regularized vide order dated 29.10.2015, w.e.f. 23.10.2015 without any break in service. It is relevant to note that the petitioner being a Group 'C' employee, would squarely fall under the exception clause carved out by the Supreme Court in **Rafiq Masih's case** (*supra*) wherein, it was declared that where payments have been mistakenly paid by the employer in excess of the entitlement of the employee, when it comes to the issue of recovery, it would not be permissible in law to make recoveries from employees belonging to Class III and Class IV service (Group 'C' and Group 'D' service). For ready reference, para 12 of the said judgment is reproduced hereinbelow:-

“12. 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 herein above, we may, as a ready reference, summarise 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.”

13. In view of the fact that the petitioner is a Group ‘C’ employee, we are of the opinion that any excess amount erroneously paid by the respondents to him, ought not to be recovered, as it would be iniquitous on the part of the respondents to do so, particularly, when he was regularized on the same post by the respondents w.e.f. 23.10.2015 and has remained in continuous service during all this period.

14. For the aforesaid reasons, the impugned order dated 10.10.2017 is not sustainable and is accordingly quashed and set aside. As a result, the office order dated 13.02.2017 is also quashed and set aside. Any amount recovered by the respondents/DSIIDC from the petitioner in terms of the office order dated 13.02.2017, or prior thereto in terms of the order dated 29.02.2016, shall be refunded to him within four weeks from today.

15. The petition is allowed in the above terms while leaving the parties to bear their own expenses. It is made clear that the order passed herein above is in the light of the fact situation of the present case and any other petition raising the same issue, shall have to be examined as per its own peculiar facts and circumstances.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 09, 2018

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