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

+ W.P.(C) 659/2016

RATTAN LAL GUPTA Petitioner

Through: Mr.Aman Mudgal, Advocate

versus

GNCT THROUGH ITS SECRETARY & ORS..... Respondent

Through: Mr.Anuj Aggarwal, ASC and Mr.Yogesh
Kumar, DEO, Zone (XI)

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

19.03.2019

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1. The petitioner assails the order dated 23.12.2014 and 16.9.2015 passed by the Central Administrative Tribunal in O.A. No.1245/2013 in the Review Application 44/2015 preferred in the said Original Application. The Tribunal has rejected both the Original Application and the Review Application.
2. In this case, the petitioner retired from service on 03.9.2009 as PGT (History). He was re-employed w.e.f. 1.10.2009 to 8.9.2011. Vide orders dated 25.8.2011 and 3.10.2011, the respondent sought to effect recovery of Rs.38,480/-, which was amended to Rs.47,472/- on account of excess amount drawn by the petitioner towards the Transport Allowance (TA). Initially, petitioner preferred an O.A. No.1663/2012 which was disposed of at the admission stage on 16.5.2012 directing the respondent/ Director of Education to take a

decision on the representation of the petitioner. Eventually the respondent passed a speaking order on 11.1.2013 rejecting the petitioner's representation. Consequently he preferred the aforesaid Original Application No.1245/2013. The Tribunal rejected the Original Application on the premise that the petitioner had not disputed the recovery of the excess amount of TA drawn by him. He had, in fact, in his representation dated 25.8.2011 suggested that recovery of the excess amount be made in easy instalment of Rs.10,000/- per month. Consequently, the Tribunal held that the petitioner could have no grievance.

3. The submission of counsel for the petitioner is that since the recovery of the excess amount was illegal, the suggestion made by the petitioner that the same may be recovered in easy instalment, is neither here nor there. In support of his submission, counsel has placed reliance on the decision of the Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) & Ors.*** 2015 (4) SCC 334.
4. Mr. Aggarwal, who appears for the respondent, does not dispute the fact that the decision in ***Rafiq Masih (Supra)*** is attracted in the circumstances of the present case.
5. In our view, merely because the petitioner may have stated in his representation that recoveries may be made in easy instalments of Rs.10,000/- per month, is no reason to hold that the recovery is legal. It is not the case of the respondent that the petitioner made a false claim or representation, due to which the excess amount of TA was released to him. The release of TA to the petitioner was entirely on account of respondent's own mistake. The present case is squarely

covered by the judgment of the Supreme Court in *Rafiq Masih (Supra)*. Paragraph 18 thereof, reads as under:

“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)

6. In view of the settled position of law, we allow the present writ petition and set aside the impugned orders. We direct that no recovery should be made from the petitioner on account of excess payment of Travelling Allowance paid to him amounting to Rs.47,472/-. The recoveries, if any, made shall be refunded to the petitioner within four weeks from today.

7. The petition stands disposed of, in above terms.

VIPIN SANGHI, J

REKHA PALLI, J

MARCH 19, 2019

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