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

+ W.P.(C) 2026/2019

S. K. SINGH AND ORS.

..... Petitioners

Through: Mr. R.K. Kapoor and Ms. Kheyali,
Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Dev P. Bhardwaj, CGSC with Mr.
Jatin Teotia, Adv. for R-1 to R-3/UOI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **27.02.2019**

CM APPL. 9493/2019

Exemption allowed, subject to all just exceptions.

CM APPL. 9494/2019

By this application the petitioners seek permission to file better copies of dim/illegible documents.

The application is allowed.

W.P.(C) 2026/2019 & CM APPL. 9492/2019

Issue notice. Counsel for the respondents accepts notice.

In view of the short controversy raised in this petition, we proceed to dispose of this petition without calling for a reply.

The petitioners preferred their Original Application No.1980/2017 before the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) wherein they assailed the re-fixation of their pay and proposed recovery sought to be made upon such re-fixation. The Tribunal did not agree with the petitioners' submissions insofar as the re-fixation of pay is concerned.

The petitioners have accepted that position and do not assail the same.

On the aspect of recovery, the Tribunal took note of the decision of the Supreme Court in ***State of Punjab & Ors. Vs. Rafiq Masih & Ors.***, 2014 (8) SCALE 613 wherein the Supreme Court observed as follows:

“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.”*

The Tribunal held that the petitioners were not responsible for wrong fixation of their pay and, consequently, invoked the said decision. It held that the order of recovery in respect of the applicants, who had retired when the impugned orders were issued, or, were due to retire within one year of the same, is impermissible as per law laid down by the Supreme Court. Some of the applicants were found to be qualified for relief as laid down in the decision

in ***Rafiq Masih*** (supra).

The only grievance of the petitioners is that in the operative part of the said decision, the Tribunal has not specifically mentioned that the petitioners, who may be covered by the other of the five categories set out in the ***Rafiq Masih*** (supra), would also be entitled to protection against recovery.

Learned counsel for the respondents cannot dispute the position that the employees, who fall in any of the five categories set out in ***Rafiq Masih*** (supra), would be entitled to protection against recovery. However, he submits that the facts in relation to each of the petitioners are not disclosed as to whether, or not, they will be covered by one or the other categories set out in ***Rafiq Masih*** (supra).

The Tribunal has issued a general direction, and we are also not inclined to issue a specific direction in respect of each of the petitioners/applicants after examining their respective facts. We only clarify that, in case, the case of the petitioners, or some of them, are covered by one or the other five categories set out in ***Rafiq Masih*** (supra), taken note hereinabove, the recovery would not be made against them. The respondents shall determine, in the facts of each of the petitioners, whether or not, they are covered by the five categories stated in ***Rafiq Masih*** (supra) and pass appropriate orders.

Petition stands disposed of in above terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

FEBRUARY 27, 2019

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