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

+ W.P.(C) 2658/2019 & C.M. No. 12340/2019

DR. TARSEM LAL Petitioner

Through: Mr. Aditya K. Duhey, Adv.

versus

MINISTRY OF AGRICULTURE AND FARMERS WELFARE
AND ORS. Respondent

Through: Mr. Rakesh Kumar, Adv. for R-1
Mr. SS. Lingwal, Adv. for R-2,3,4

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

03.04.2019

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Issue notice. Counsel for the respondents accept notice. In view of the order that we propose to pass, we do not consider it necessary to call for a reply from the respondents.

The petitioner is aggrieved by the order dated 10.10.2018 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 1838/2016. The Tribunal has rejected the said Original Application preferred by the petitioner to assail the recovery of the amount of Rs. 6,24,941/- from him on account of excess payment.

The Tribunal has held that the petitioner's case is not covered by decision of the Supreme Court in *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc.*, (2015) 4 SCC 334. The reason given by the Tribunal for holding as aforesaid was that even though the recovery order was issued

on 22.02.2016 (the date of retirement of the petitioner being 30.04.2016), the petitioner had been put to notice as early as on 19.12.2014 that he was not entitled to payment made to him towards arrears on promotion in the grade of Principal Scientist. The petitioner had made a representation on 12.02.2015 i.e. more than one year before his retirement.

Having heard learned counsel for the petitioner and perused the impugned order, we are of the view that the petitioner was not entitled to the benefit of the decision in ***Rafiq Masih*** (Supra). This is for the reason that though the recovery was sought to be affected at the fag end of the petitioner's service, the proceedings to affect the recovery had been initiated much earlier i.e. on 19.12.2014.

There is, however, another aspect of the matter. The petitioner had also raised grounds in his Original Application questioning the recovery sought to be made from him on merits. He had also contended that the respondent had granted notional fixation of pay as Principal Scientist w.e.f 27.07.1998 but, with no rhyme or reason, the actual benefit was granted only from July, 2013, even though, he was promoted as Principal Scientist vide order dated 30.11.2012. The aforesaid aspects have not been addressed by the Tribunal in the impugned order.

We, therefore, remand the matter back to the Tribunal for consideration of the submissions of the petitioner which have not been considered in the impugned order while maintaining the finding returned by the Tribunal on the aspect of non-application of the decision of the Supreme Court in ***Rafiq Masih*** (Supra) to the petitioner's case.

The parties shall appear before the Tribunal on 23.04.2019.

Till the matter is heard and decided by the Tribunal, recovery may not

be affected from the petitioner's pension.

The petition stands disposed of in the aforesaid terms.

Dasti.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 03, 2019

N.Khanna