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

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Date of Judgment: 24th May, 2019

+ **W.P.(C) 5462/2019**

NORTH DELHI MUNICIPAL CORPORATION AND ANR.

.....Petitioners

Through: Mr. Aman Bakshi and Ms. Biji
Rajesh, Advocates

Versus

SH. RAJ KUMAR

.....Respondent

Through: None.

CORAM:

**HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH**

G.S. SISTANI, J. (ORAL)

This matter has been received on transfer.

1. The present appeal is directed against the order dated 6th February, 2019 passed by the Central Administrative Tribunal. The respondent herein was working as a Horticulture Inspector in the Municipal Corporation of Delhi (for short 'the MCD'). An industrial dispute was raised by him claiming promotion to the post of Section Officer from the date his juniors were promoted. He also sought consequential benefits including arrears of salary. By an Award of 24th March, 2009, relief of notional promotion was granted in favour of the respondent alongwith the arrears of salary. The writ petition being W.P.(C) 11737/2009 filed by the erstwhile MCD (now North Delhi Municipal Corporation) in this Court challenging the Award of the

Labour Court, was partly allowed and the award was modified to the extent that the respondent was held entitled to get only *ad hoc* promotion as a Section Officer. LPA bearing no.78/2012 was filed by the petitioners challenging the judgment of the learned Single Judge, which was allowed on 11th May, 2012 and the award of the Labour Court as well as the judgment of the learned Single Judge was set aside. The respondent workman filed a SLP bearing no.19699/2012 challenging the order of the Division Bench, which was dismissed on 27.10.2014.

2. In the meantime, the petitioners had issued a show cause notice dated 31.10.2012 to the respondent herein, requiring him to explain as to why the amount of Rs.11,62,975/- be not recovered from him with 10% simple interest, which had been paid to the respondent pursuant to the proceedings initiated by him under Section 33(C)(1) of the Industrial Disputes Act, 1947.

3. The respondent challenged the action of the petitioners initiating recovery for a sum of Rs.11,62,975/- from his salary by filing an O.A. No.06/2013 before the Central Administrative Tribunal. The following prayers were made in the said O.A.:-

a) Issue an appropriate order or direction thereby declaring the impugned action on the part of North Delhi Municipal Corporation in initiating a recovery of a sum of Rs.11,62,975/- from the salary of the applicant and pursuant thereto recovering a sum of Rs.4,317/- from the salary for the month November, 2012 of the applicant to be illegal, unjust, discriminatory, punitive, unreasonable arbitrary, unconstitutional, violative of principles of natural justice and violative of Article 14, 16 and 21 of the Constitution of India;

b) Issue an appropriate order or direction thereby directing the Respondent/Management to forthwith repay the sum of money as recovered from the salary of the applicant to the

applicant along with interest thereupon to be calculated @ 12% per annum;

c) pass any such other or further order (s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in favour of the Applicant.

d) Allow the present Application with cost.

4. Vide the impugned judgment, the learned Tribunal has rejected the plea of the respondent, insofar as claim of Rs.11,62,975/- is concerned and has permitted the petitioners herein to seek recovery of the said amount. However, keeping in mind the fact that the respondent has retired from service, the learned Tribunal has held that the petitioners herein cannot be permitted to levy any interest. The O.A. was thus partly allowed setting aside, portion of the show cause notice which has proposed to levy 10% interest on the respondent. It has been directed that the amount payable by the respondent shall be worked out after deducting the same and the amount due and payable to him be released within three months from the date of receipt of the copy of the order. It is this order, which is challenged before us.

5. Learned counsel appearing for the petitioners submits that since the respondent has had the benefit of the principal amount, he should be directed to pay the interest on the same. He further submits that public money is involved and there is no reason why the respondent should be permitted to unjustly enrich himself.

6. We have heard learned counsel for the petitioners and also examined the order passed by the Central Administrative Tribunal. The learned Tribunal has rejected the claim of the respondent wherein he had impugned the recovery of a sum of Rs.11,62,975/-. What has weighed with the learned

Tribunal is that this money had been received by the respondent pursuant to an award and the judgment of the learned Single Judge upholding the award. However, subsequent thereto the Division Bench had allowed the LPA and the Apex Court had upheld the order of the Division Bench. As a result of this, the very basis for which the payment had been made to the respondent, had disappeared and, therefore, in the opinion of the Tribunal the public exchequer could not be burdened with this money and to permit the respondent to retain the money would be unjustly enriching him. In our opinion, this view of the learned Tribunal is correct and we see no reason to interfere with the same. Insofar as the payment of interest is concerned, we are of the view that the learned Tribunal has rightly held that since the respondent has retired, the petitioners cannot be permitted to levy the interest. We may also hasten to add that the money on which interest is being sought was initially received by the respondent pursuant to an award passed in his favour. Therefore, it cannot be said that till the decision of the Apex court was pronounced, the money was illegally retained by the respondent. For this additional reason, in our opinion, the petitioners cannot levy the 10% interest on the respondent and this part of the show cause notice has been rightly set aside by the Tribunal.

7. We find no infirmity in the order of the learned Tribunal.

8. With these observations, the above writ petition is dismissed.

G.S. SISTANI, J

JYOTI SINGH, J

MAY 24, 2019/s