



\$~4

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

%

Judgment delivered on: 28.07.2022

+ W.P.(C) 7359/2022 & CM APPL. 22511/2022

ANAND KUMAR

..... Petitioner

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.

.....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ranjit Sharma, Advocate.

For the Respondents: Ms. Namrata Mukim, Standing Counsel for
North MCD

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 16.11.2021 passed by the Central Administrative Tribunal, Principal Bench, Delhi (hereinafter referred to as the 'Tribunal') whereby the Tribunal declined to grant any interim protection to the Petitioner pending consideration of the Original Application filed by the Petitioner.

2. Petitioner had, *inter alia*, sought to impugn the order of the Respondents whereby they had sought to recover certain amount paid to the Petitioner under the head of 'Travelling Allowance' for the



period when Petitioner was suspended from service.

3. Learned counsel for the Petitioner submits that Petitioner was wrongly suspended and has been reinstated with full back wages and consequential benefits. He submits that 'Travelling Allowance' being one of the allowances is payable to the Petitioner in terms of the Fundamental Rule 54 B (3).

4. Without prejudice to the same, learned counsel for the Petitioner submits that in view of the law laid down by the Supreme Court in the case of *State of Punjab and Ors. v. Rafiq Masih, (2015) 4 SCC 334*, even in cases where payment has been mistakenly made by the employer in excess of entitlement of the employee, no recovery is to be made from Class III or Class IV or Group 'C' or Group 'D' employees.

5. Learned counsel for the Petitioner submits that Petitioner is a Class IV employee, as such no recovery could have been made from his salary. He submits that substantial amount has already been recovered and the Petitioner has already approached the Tribunal for restoration of the amount illegally deducted from the salary of the Petitioner.

6. Learned counsel for the Respondents submits that the amount was admittedly incorrectly paid to the Petitioner as the Petitioner was not entitled to Travelling Allowance for the period when he was under suspension as he was not required to attend the office. Consequently, the Respondents are within their right to recover the amount.

7. Be that as it may, even if the contention of the Respondents



were to be accepted on their face value i.e. Petitioner has been incorrectly paid the amount and the same is liable to be recovered, this question would be squarely covered by the judgment of the Supreme Court in *Rafiq Masih (supra)*.

8. It is noticed that the Tribunal in the impugned order dated 16.11.2021 while setting the Original Application down for hearing, has declined to grant interim protection holding that in case deduction is made, Tribunal would be in a position to compensate the applicant in terms of money if the applicant finally succeeded in the Original Application.

9. In the facts and circumstances of the case and keeping in view the fact that the Petitioner is a mere Chaukidar and Class –IV employee and also taking into account the ratio of the judgment of the Supreme Court in *Rafiq Masih (supra)*, we are of the view that no further deduction should be permitted to be made from the Petitioner's salary till final disposal of the Original Application. Even otherwise, in case Petitioner were to fail in the Original Application, Respondent would be in a position to make the recovery from the Petitioner as he still has many years of service remaining.

10. In view of the above, impugned order dated 16.11.2021 to the limited extent that it declines to grant any stay of recovery is set aside. It is directed that no further recovery shall be made from the salary of the Petitioner till final disposal of the Original Application by the Tribunal.

11. It is further clarified that the Tribunal would be at liberty to



consider the application filed by the Petitioner seeking restitution of the amount already deducted in accordance with law without being influenced by anything stated in this order.

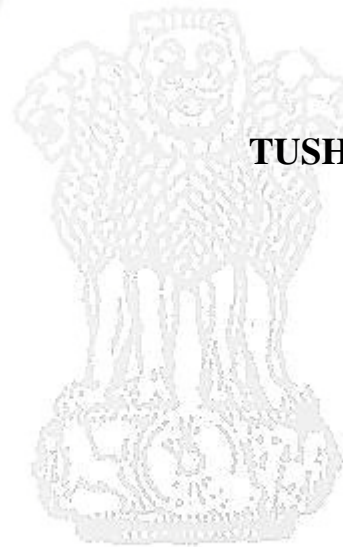
12. Petition and the application filed herewith are accordingly disposed in above terms.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

JULY 28, 2022

‘yg’



न्यायमेव जयते