

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

% *Date of decision: May 08, 2023*

+ W.P.(C) 1160/2019, CM APPL. 5240/2019 (interim stay)

CHAIRMAN, DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Ms. Aditi Gupta, Advocate.

versus

RAMJI LAL

..... Respondent

Through: Mr. D.K. Chopra, Advocate.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO,J (ORAL)

1. The challenge in the Writ Petition is to an order dated September 12, 2018 passed by the Central Administrative Tribunal (in short 'Tribunal') in O.A. 4308/2017, whereby the Tribunal has disposed of the Original Application by stating in paragraphs 5.3 and 5.4 as under:

*"5.3 Per contra, respondents' case is that the applicant was erroneously granted the higher grade pay, due to which said recovery was made. As far as the recovery aspect is concerned, the same is squarely covered by the judgment of the Hon'ble Supreme in the case of **Rafiq Masih** (supra). The said excess payment was not on account of any fraud or misrepresentation by the applicant. The recovery made from the applicant, therefore, falls with the following categories, which have been held to be impermissible in law, as per the afore-mentioned judgment:-*

"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."

There cannot be any ambiguity that the judgment of Hon'ble Supreme Court in the case of Rafiq Masih (supra) is law of the land and applicable to everyone. I, therefore, hold that the recovery of Rs. 1,33,137/- and Rs. 76,178/- has been recovered illegally from the terminal benefits/salary of the applicant and should be refunded to him immediately and in any case not later than three months from the date of receipt of a certified copy of this order.

5.4 The respondents have produced Annexure R-3, which shows that the pay of the applicant on 01.07.2016 was Rs. 14,410/-. However, as per (Annexure A-9) the document produced by the applicant in O.A., his pay as on 01.07.2016 has been reflected as Rs.14,870/-, based on which his pension has been fixed at Rs.14,710/-. In view of the two different entries in the records of the official records, for the same date of

01.07.2016, the respondents are directed to revisit the case of the applicant by getting the matter re-examined regarding the exact last basic pay drawn by the applicant on the relevant date, and get his pension fixed correctly. This exercise must be completed within 03 months from the date of receipt of a certified copy of this order.”

2. The case of the respondent before the Tribunal was primarily against the recovery that was made from the salary between the period September, 2014 till September, 2015 and also from the Gratuity paid to the respondent at the time of his retirement on 31.10.2016. The amounts recovered from salary and Gratuity were Rs.76,178/- and Rs.1,33,137/- respectively.
3. The case of the respondent was that the same could not be effected in view of the judgment of the Hon’ble Supreme Court in ***State of Punjab & Ors. vs. Rafiq Masih & Ors.***, reported as 2014(8) SCALE 613.
4. The case of the petitioner before the Tribunal was that the recovery of Rs.76,178/- was effected because of wrong fixation of salary in the year 2009, which came to the notice of the petitioner pursuant to an audit carried out by the C.A. firm in the year 2011 and accordingly a correct fixation order was issued in the year 2014 and thereafter, the recovery was made from the salary in the years 2014-15. In so far as the recovery with regard to Rs. 1,33,137/- was concerned, the same was also on similar ground.
5. On a pointed query to the learned counsel for the petitioner as to when exactly the wrong fixation of pay made, she could not specify the date.
6. Be that as it may, the Tribunal vide the impugned order, has directed the refund of the recovery affected by the petitioner. It also granted liberty to the petitioner to re-examine the exact last basic pay to be drawn by

the respondent on the relevant date and get his pension fixed correctly.

7. The submission of the learned counsel for the petitioner also includes that at the time of pay fixation in the year 2009, it was specifically mentioned that any excess payment made pursuant thereto, shall be recovered. Suffice to state no document in that regard has been filed.
8. On the other hand, the learned counsel for the respondent would justify the order of the Tribunal, which is based on the judgment of the Supreme Court in *State of Punjab vs. Rafiq Masih*. According to him, the petitioner could not have effected the recovery of Rs. 76,178/- and even Rs. 1,33,137/- after a period of more than five years that is in the year 2014 when the fixation was in 2009 and also at the time of retirement of the respondent.
9. We have considered the facts and submissions made. The benefit of Rs.76,178/- given to the respondent was pursuant to a fixation carried out in 2009. The audit carried out was in the year 2011. The correct fixation was done in the year 2014 and recovery was made thereafter. No reasons have been given why delay had occurred between 2009 and 2014 or for that matter 2011 and 2014.
10. One of the plea taken by the counsel for the petitioner is that the claim with regard to Rs. 76,178/- was in any case barred by time as the respondent had filed the Original Application only in the year 2017.
11. We are unable to agree with the submissions of the counsel for the petitioner on three grounds; firstly, in any case, the excess salary was recovered in the years 2014-15 pursuant to the fixation order issued on 15.07.2014, correcting wrong fixation made in the year 2009, that is after five years. Secondly, the plea that it was represented to the

respondent, that excess amount shall be recovered was not when the actual fixation was made in 2009, but on July 15, 2014, when fixation was corrected. Thirdly, it was only pursuant to an RTI application made by the respondent that the petitioner has conveyed to the respondent the recovery, which has been effected every month in the years 2014-15 and it is immediately thereafter, that the respondent had filed the Original Application.

12. In so far as the recovery of amount of Rs. 1,33,137/- is concerned, it is the conceded case that recovery was sought to be effected from the DCRG, which was payable to the respondent at the time of his retirement.
13. In view of the judgment of the Supreme Court in *State of Punjab vs. Rafiq Masih*, wherein the Supreme Court has culled out the five situations, where the recovery cannot be effected, we are of the view that the amounts of Rs.76,178/- and Rs. 1,33,137/- could not have been recovered by the petitioner in 2014-2015 and at the time of retirement of the respondent. To that extent, the Tribunal is justified in ordering the refund of the recovery effected from the salary/terminal benefits of the respondent. In so far as the conclusion of the Tribunal in paragraph 5.4, liberty having been granted to the petitioner to re-examine regarding the exact last basic pay drawn by the respondent on the relevant date and get his pension fixed correctly, as there is no challenge to the said direction of the Tribunal by the respondent, we do not see any reason to interfere with the said direction.
14. We do not see any merit in petition. The same is dismissed.

15. Pending application also stands disposed of.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 8, 2023/akc

