



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

% Date of decision: 15th December, 2023

+ W.P.(C) 5453/2023

(2) DELHI TRANSPORT CORPORATION Petitioner
Through: Mr. Aviral Saxena, Standing Counsel,
DTC with Mr. Piyush, Adv.

versus

BALWAN SINGH Respondent
Through: Mr. Vivek Luthra and Mr. Deepak
Lohchab, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated February 14, 2023, passed by the Central Administrative Tribunal in O.A. 1796/2019 whereby, the Tribunal has allowed the O.A. filed by the respondent herein by stating in paragraphs 11 and 12 as under:-

*“11. It is clear that the facts of the present O.A. are covered under the judgment rendered by the Hon’ble Apex Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih** (supra) and followed by the DoP&T O.M. dated 16.01.2013, as the applicant was a class III employee and was retired too as mentioned in clauses (I) and (II) as reproduced hereinabove.*

12. For the reasons stated hereinabove, the O.A. is allowed, impugned Order dated 28.09.2018 is hereby quashed. The respondents are directed to refund an



amount of Rs. 2,12,866/- to the applicant within a period of eight weeks from the date of receipt of a certified copy of this Order.”

2. The challenge made by the respondent before the Tribunal was with regard to a demand notice dated September 28, 2018, made by the petitioner herein for an amount of ₹2,12,866/- from the respondent herein, on the ground the same was paid on a wrong fixation.

3. The facts as noted from the record are, the respondent was appointed as a Driver to Delhi Transport Corporation (‘petitioner’, in short) on October 31, 1989. He retired on September 30, 2018 on attaining the age of superannuation. It was, two days before his retirement, the demand notice for recovery of an amount of ₹2,12,866/- was made from the gratuity payable to the respondent at the time of his retirement. It appears that the justification for recovery was primarily because of wrong fixation of pay of the respondent w.e.f December 17, 2009. The petitioner relied upon the undertaking dated September 05, 2018, said to have been given by the respondent to the extent of recovery of over payment from pay and allowance, PF, Gratuity and pension, etc.

4. The Tribunal did not agree with the stand taken by the petitioner Corporation and granted the relief to the respondent in the manner it did in paragraphs 11 and 12 of the impugned order.

5. Today, before us, the learned counsel for the DTC would make a similar submission by relying upon the judgment of the Supreme Court in *High Court of Punjab and Haryana and Others v. Jagdev Singh, (2016) 14 SCC 267*, to contend that the respondent having given



an undertaking, permitting the petitioner herein to make a recovery, the Tribunal could not have set aside the recovery of ₹2,12,866/-. We are not in agreement with the said submission made by learned counsel for the petitioner inasmuch as in the present case, the pay fixation was made w.e.f. December 17, 2009, but without any undertaking given by the respondent. In the said judgment, the Supreme Court was concerned with a benefit which was bestowed on the respondent therein w.e.f., January 07, 2002. At the time of granting the benefit, the respondent therein had given an undertaking that if the payment to be made is found to have been made in excess, the same would be required to be refunded. It is not such a case here, as the undertaking sought to be relied upon by the petitioner herein is an undertaking given by the respondent on September 05, 2018, i.e., just immediately preceding the date of retirement when recovery sought to be affected and not at the time of grant of benefit to him in the year 2009, which is the case in the above judgment. Such an undertaking cannot be taken against the respondent to affect the recovery that too from 2009.

6. We are of the view that the Tribunal has rightly relied upon the judgment of the Supreme Court in the case of ***State of Punjab v. Rafiq Masih (White Washer)***, (2015) 4 SCC 334, to set aside the impugned demand of ₹2,12,866/- by the petitioner from the respondent. The Supreme Court in the case of ***Rafiq Masih (supra)*** has culled out five situations when recovery cannot be affected. The same are reproduced as under:-

“(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).



(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

7. The case of the respondent shall be covered by situation (i), (ii) and (iii) above. We do not find any reason to interfere with the impugned order.

8. The writ petition being without any merit is dismissed. No cost.

V. KAMESWAR RAO, J

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 15, 2023/ds