



Neutral Citation Number 2023:DHC:5630-DB

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

% Judgment delivered on: 08th August, 2023

+ **W.P.(C) 10023/2023**

**MAHANAGAR TELEPHONE NIGAM LIMITED (M.T.N.L)
THROUGH ITS DEPUTY MANAGER (P AND A) Petitioner**

versus

SATYA NARAIN SHAHNI Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Chandan Kumar with Ms.Kirti Atri, Advocates.

For the Respondent: Mr. T.P. Yadav, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.38638/2023 (exemption)

Exemption allowed subject to all just exceptions.

W.P.(C) 10023/2023 & CM APPL.38637/2023 (stay)

1. Petitioner Mahanagar Telephone Nigam Limited impugns judgment dated 11.10.2022 of the Central Administrative Tribunal Principal Bench (hereinafter referred to as 'the Tribunal') whereby the Tribunal has allowed the original application filed by the respondent



Neutral Citation Number 2023:DHC:5630-DB

and directed that the recovery made against the respondent needs to be quashed. Consequently, order dated 12.06.2017 passed by the petitioner whereby the amount was recovered from the respondent has been quashed and petitioner has been directed to refund the amount already recovered from his salary and pensionary benefits.

2. Respondent was engaged as a casual labour in the Department of Telecommunication, Government of India in the year 1976. He later opted to be absorbed in the petitioner as regular *Majdoor* and sought to be governed by CCS Pension Rules, 1972.

3. Respondent superannuated on 31.12.2016 after attaining the age of superannuation. At the time of computing his retiral benefits, petitioner withheld an amount of Rs.1,16,252/- on the ground that an excess amount had been paid to him towards his salary on account of some error in computation.

4. Being aggrieved by the order of recovery, respondent filed the subject original application and relied on the decision of the Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer) and Ors.*: (2015) 4 SCC 334 [hereinafter referred to as '*Rafiq Masih (2015)*'].

5. Subject petition has been allowed by the impugned order dated 11.10.2022 and consequently petitioner has approached this Court.



Neutral Citation Number 2023:DHC:5630-DB

6. It is not in dispute that respondent was a group D employee and had been engaged as casual labour and was subsequently regularised as regular Majdoor.

7. There is also no dispute that the recovery sought to be made against the respondent was in respect of certain over payments made by the petitioner MTNL on account of some error in their computation. Respondent is admittedly not liable for the said error or instrumental in causing the error in the computation.

8. The Supreme Court in *Rafiq Masih (2015) (supra)* has held as under:-

“18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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.



Neutral Citation Number 2023:DHC:5630-DB

(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."*

9. The Supreme Court in *Rafiq Masih (2015) (supra)*, has summarized the situations wherein recovery by employers is impermissible in law. One such situation referred to is where recovery is sought to be made from employees belonging to Class III and IV service (or Group C and Group D service). Another situation is where recovery is sought to be made from employees who are retired employees or due to retire within one year of the order of recovery. Another category mentioned is where excess payment has been made for a period in excess of five years, before the order of recovery is issued.

10. Respondent is admittedly a Group – D employee and recovery



Neutral Citation Number 2023:DHC:5630-DB

was sought to be made on the date when his retiral benefits were disbursed to him post his superannuation. Clearly, the case of respondent is covered by situation (i) and (ii), referred in *Rafiq Masih (2015) (supra)*. It is not clear from the Sanction Order dated 13.06.2017 as to whether the excess payment that is to be recovered is for a period beyond 5 years or not. The sanction order is completely silent in respect of the same and it merely records that the said amount “has to be recovered from DCRG on account of N/A”. No reason has till date been communicated to the Respondent.

11. Clearly the case of respondent is covered by the ratio of the judgment in *Rafiq Masih (2015) (supra)* and there is no error in the impugned judgment of the Tribunal holding that the recovery was not lawful and quashing the same and further directing that the amount withheld be paid to respondent within a period of 90 days.

12. Reliance placed by learned counsel for the petitioner on the decision of the Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer) and Ors.*: (2014) 8 SCC 883 [hereinafter referred to as ‘*Rafiq Masih (2014)*’] to contend that the directions issued by the Supreme Court under Article 142 of the Constitution of India do not comprise *ratio decidendi* and are not binding precedents is misplaced for the reasons that the in *Rafiq Masih (2015) (supra)*, Supreme Court has laid down categories of cases where recovery is



Neutral Citation Number 2023:DHC:5630-DB

impermissible. Said decision is not a decision restricted to the facts and circumstances of that particular case but is a judgment *in rem*. Further, it may be noticed that the Supreme Court in *Rafiq Masih (2015) (supra)* has referred to the decision in *Rafiq Masih (2014) (supra)*.

13. Further reliance placed by learned counsel for the petitioner on the decision of the Supreme Court in *Chandi Prasad Uniyal vs. State of Uttarakhand: (2012) 8 SCC 417* is also misplaced for the reason that the Supreme Court in *Rafiq Masih (2015) (supra)* has also referred to judgment in *Chandi Prasad Uniyal (supra)* and then laid down the situations where it is impermissible for the employer to make recovery in cases where payments had been made mistakenly in excess of the entitlement of the employees.

14. In view of the above, we find no merit in the petition. The Petition is, consequently, dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

AUGUST 08, 2023/st