



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

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Date of decision: September 19, 2023

+ W.P.(C) 12145/2023 & CM Appls. 47707-47708/2023

(54) GOVT OF NCT OF DELHI AND ORS

..... Petitioners

Through: Mrs. Avnish Ahlawat, Standing Counsel GNCTD (Services) with Mrs. Taniya Ahlawat, Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs.
Mr. Khemraj, Junior Assistant, D.A.

versus

MOHINDER SINGH SIWACH

..... Respondent

Through: Mr. Sourabh Ahuja, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated October 18, 2023 in O.A. 1650/2020 whereby the O.A. filed by the respondent has been allowed by the Tribunal by stating in paragraphs 7 to 12 as under:-

“7. The sole question to be adjudicated in this OA is whether the applicant, who got excess payment on account of wrong fixation and against whom recovery has been ordered within 5 years, can be recovered from his pensionary benefits ?

*8. In view of the judgment of the Hon'ble Apex Court in **Rafiq Masih** (supra), this issue is no more res integra. They applicant's case squarely falls under clause (iii) of Rafiq*



Masih's case which states that "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".

9. Admittedly, the recovery is stipulated for wrong benefit given to the applicant towards MACP way back in 2006 with effect from the date of implementation of the MACP Scheme i.e., 01.08.2009. Thus, this Tribunal has no hesitation whatsoever in observing that the applicant's case is covered by **Rafiq Masih** (*supra*).

10. At this stage, learned counsel for the respondents has relied upon a decision of the Hon'ble **Supreme Court in High Court of Punjab & Haryana Vs. Jagdev Singh** Civil Appeal No. 3500/2006 decided on 29.07.2016 wherein the Hon'ble Apex Court, while discussing the case of **Rafiq Masih**, has held that 'the recovery of excess amount, paid to an employee, to be permissible where an employee has undertaken to refund the excess amount paid to him'. He submits that in the present case the applicant has given undertaking and hence, he is bound to refund the excess amount paid to him erroneously.

11. In view of the above decision, I do not agree with the submission of learned counsel for the respondents that the present case is not squarely covered by **Rafiq Masih's** case. Clause(iii) states that if recovery is more than 5 years old, then it is not recoverable. Even if undertaking is given, it is not recoverable as held by the Hon'ble Apex Court in **Rafiq Masih** (*supra*).

12. In view of the discussion made above, the OA has got merit and the same is allowed with a direction to the respondents to refund the amount so recovered from the salary or pensionary benefits of the applicant, within a period of 120 days from the date of receipt of a certified copy of this order."

2. The only submission made by Mr. Nitesh Kumar Singh, learned counsel for the petitioner is that the petitioners are within their power to re-fix the pay of the respondent as he had given an undertaking authorizing the petitioners to recover the benefits given to him pursuant to the pay fixation. Mr. Singh on instructions states that the undertaking was given at the time of



retirement.

3. If that be so, the reliance placed by Mr. Singh on the judgment of the Supreme Court in the case of ***High Court of Punjab and Haryana v. Jagdev Singh, (2016) 14 SCC 267*** which has been considered by the Tribunal in paragraph 10 of the judgment has no applicability to the facts of this case. In fact, we find that the Tribunal dealt with the said judgment in the following manner:-

10. At this stage, learned counsel for the respondents has relied upon a decision of the Hon'ble Supreme Court in High Court of Punjab & Haryana Vs. Jagdev Singh Civil Appeal No. 3500/2006 decided on 29.07.2016 wherein the Hon'ble Apex Court, while discussing the case of Rafiq Masih, has held that 'the recovery of excess amount, paid to an employee, to be permissible where an employee has undertaken to refund the excess amount paid to him'. He submits that in the present case the applicant has given undertaking and hence, he is bound to refund the excess amount paid to him erroneously.

4. In any case, the judgment of the Supreme Court in ***Jagdev Singh (supra)*** has no applicability to this case as in the said case the undertaking was given by the respondent therein at the time of grant of pay scale. It is not such a case here as the undertaking was given by the respondent at the time of retirement, which is much after the pay fixation was made. It necessary follows that in view of the judgment of the Supreme Court in ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) AIR (2015) SC 1267***, wherein the Supreme Court in paragraph 18 has held as under, we are of the view that the Tribunal is justified in allowing the O.A. in the manner it has done in paragraphs 7 to 12 of the impugned order which we have reproduced in above:-



“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 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.”

5. We do not see any merit in the petition, the same is dismissed along with the pending applications.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 19, 2023/ds