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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: October 19, 2023

+ W.P.(C) 13882/2023, & CM APPLS. 54901-54902/2023

UNION OF INDIA & ORS.

..... Petitioners

Through: Mr. Nikhil Palli, Advocate.

versus

SHRI HOSHIAR SINGH

..... Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****V. KAMESWAR RAO, J. (ORAL)**

1. The challenge in this writ petition is to an order dated February 13, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA No. 363/2022, whereby the Tribunal has allowed the OA filed by respondent herein by stating in paragraphs 4 and 5 as under:

"4. After considering the facts as stated, this Tribunal is of the view that the case of the applicant is covered by the judgment of Hon'ble Supreme Court in the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) in civil Appeal No. 11527 of 2014 (Arising out of SLP (C) No.11684 of 2012). Wherein it has been held that:

"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."*

5. *Since the applicant is retired from service his case falls under clause (C), this Tribunal is of the considered view that the respondents shall refund the money to the applicant within a period of 90 days from the date of receipt of copy of this order."*

2. The submission of Mr. Palli, learned counsel appearing for the petitioners is that the grant of 3rd MACP to the respondent was bona fide mistake, which the respondent was not entitled to and the petitioners are within their right to recover the amount by correcting their mistake.

3. Suffice to state, the 3rd MACP was granted to the respondent on July 29, 2011 and the benefits granted were sought to be recovered by the petitioners in the year 2018, i.e. after more than 7 years. The judgment of Supreme Court dated December 18, 2014 in the case of ***State of Punjab vs. Rafiq Masih & Ors., (2015) 4 SCC 334***, is very clear and has been rightly relied upon by the Tribunal for allowing the O.A.



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4. We are of the view that the only submission made by Mr. Palli to justify the recovery is untenable. The petition is without any merit, the same is dismissed. Pending applications are dismissed as infructuous.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 19, 2023/R