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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 28.11.2023

+ W.P.(C) 15034/2023, CM APPL. 60081/2023 & CM APPL. 60082/2023

INDIAN COUNCIL OF MEDICAL RESEARCH & ANR. Petitioners

Versus

INDRA RANI

..... Respondent

Advocates who appeared in this case:

For the Petitioners:

Mr. Jasbir Bidhuri, Advocate.

For the Respondent:

Mr. M.K. Bhardwaj with Ms. Priyanka M Bhardwaj and
Mr. Arun Prakash, Advocates.**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE MANOJ JAIN****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner, Indian Council of Medical Research impugns order dated 24.01.2023 whereby the Central Administrative Tribunal hereinafter referred as the Tribunal has quashed order dated 02/03.03.2021 whereby the pay of *inter alia* the petitioner had been revised downward retrospectively and direction for recovery was made. Said order was



quashed by the Tribunal solely on the ground that no show cause notice was given to the respondent prior to passing the said order.

2. Learned counsel for petitioners submits that the Tribunal has not reserved the right of the petitioners to issue a show cause notice and then to revise the pay in accordance with law.

3. Learned counsel for the respondent submits that in addition to non-compliance of the principals of natural justice, petitioners also cannot recovery the amount already paid in view of the judgment of the Supreme Court in *State of Punjab And Others V. Rafiq Masih (White Washer) And Others, 2015 4 SCC 334* as the respondent has already superannuated on 31.12.2020 and the impugned order was passed after the date of his superannuation.

4. In so far as the issue of recovery is concerned the same is squarely covered by para 12 Sub Clause II wherein the Supreme Court has categorically held that recovery from retired employees is impermissible in law.

5. With regard to the downward fixation of pay is concerned, the same would have a ripping effect with regard to the pension that is paid to the respondent. However, in so far as the fixation of pay for the purposes of calculation of pension payable in the future is concerned, respondent is not protected by the judgment in *State of Punjab And Others V. Rafiq Masih (White Washer) And Others (supra)*.



6. We note that the Tribunal has not reserved the liberty of the petitioners to issue a show cause notice in accordance with law for fixation of pay and calculation/computation of pension in so far as the future is concerned.

7. Learned counsel for the respondent submits that the petitioners have, in respect of other similarly situated individuals, who are also covered by the promotion order dated 14/16.08.2017 and order dated 02/03.03.2021, implemented the order *in toto* and respondent is being discriminated against.

8. Learned counsel for the petitioners submits that respondent is not being discriminated against the appropriate action is contemplated also against other similarly situated individuals.

9. In view of the above, the petition is disposed of reserving the right of the petitioner to issue a show cause notice for any proposed action of withdrawal of promotion/fixation of pay and computation of pension in so far as future is concerned in accordance with law. This of course would be subject to the right of the respondent to defend the same.

10. The petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

NOVEMBER 28, 2023/MR