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

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Date of Decision: September 26, 2023

+ W.P.(C) 13002/2018

DR. SHASHI VASHISHT

..... Petitioner

Through: Mr. M. L. Sharma and Mr. Gaurang
Vardhan, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Shiva Lakshmi, CGSC with
Mr. Vishal Singh and Mr. Govind
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (ORAL)

1. The challenge in this writ petition is to an order dated October 01, 2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in O.A. 3885/2016, whereby the Tribunal dismissed the O.A. filed by the petitioner herein by stating in paragraph 10 as under :

"10. From the above amply clear that in view of the judgment of the Hon'ble Supreme Court in the case of Jagdev Singh (Supra), the said recovery is permissible and hence, the grounds taken by the applicant have no force in law."

2. The challenge of the petitioner before the Tribunal was to an order dated August 10, 2016 passed by petitioner No. 3 withholding a part of the gratuity amount of the petitioner of Rs. 5,19,139/- and releasing the balance amount to her, after her retirement.



3. The petitioner was appointed as a Specialist in Ophthalmology in Central Health Scheme (CHS), Government of India. In December 2009, she was appointed as Consultant in the Eye Department of Dr. Ram Manohar Lohia Hospital, New Delhi and started drawing Grade Pay of Rs. 10,000/- per month and Transport Allowance of Rs. 7,000/- per month.
4. She retired from service on August 31, 2015. On November 06, 2015, the Director General of Audit (Central Expenditure) issued a letter to the Health Secretary, Government of India, mentioning therein that the Doctors in the Senior Administrative Grade (SAG) were drawing Transport Allowance @ Rs. 7,000/- per month whereas they, in fact, are entitled to Transport Allowance @ Rs. 3,200/- per month in terms of OM issued by the Ministry of Finance in that regard.
5. Be it noted, the gratuity was not paid to the petitioner at the time of her retirement. She wrote a letter dated March 10, 2016 to the Additional Secretary & Director General, CGHS for payment of the Gratuity.
6. It was in this background that vide the impugned letter dated August 10, 2016, the Pay and Accounts Office, CGHS, Ministry of Health and Family Welfare made payment of Rs. 4,80,861/- by withholding the balance amount of Rs. 5,19,139/- and also informing the petitioner that the latter amount had been deducted on account of alleged over payment of Transport Allowance.
7. In support of her case before the Tribunal, the petitioner had relied upon the judgment of the Supreme Court dated December 18, 2014 in ***State of Punjab vs. Rafiq Masih & Ors., (2015) 4 SCC 334.***
8. The case of the respondents before the Tribunal was, the petitioner was a Group – A Officer of the CHS. She and other medical officers of the CHS were paid Transport Allowance on the assumption that they being



officers of the level of SAG are entitled to Transport Allowance but later on, Ministry of Finance, Department of Expenditure, vide its UO Note bearing No. 21(2)/2014-E.III (B), read with paragraph 7.1 of Report No. 18 of 2015 of the Comptroller & Auditor-General of India (CAG), pointed out that medical officers like the petitioner are not entitled to Transport Allowance.

9. When the bill of Rs.10,00,000/- towards payment of residual gratuity to the petitioner was sent to the Pay & Accounts Office, they on noting that the over-payment of Transport Allowance has been made, after deducting the over-paid amount, paid an amount of Rs. 4,80,861/-.

10. It was further submitted that CAG being a constitutional body, which audits accounts of the Central Government as well as of State Governments, had pointed out about the excess payment, the Ministries, Departments and Offices of the Central Government have no option but to make recovery.

11. The Tribunal while dismissing the O.A. has relied upon the judgment of the Supreme Court dated July 29, 2016, in '**High Court of Punjab and Haryana and others vs. Jagdev Singh**', Civil Appeal No. 3500/2006 wherein in paragraph 9, it has stated as under :

“9. In the case of High Court of Punjab and Haryana and others vs. Jagdev Singh in Civil Appeal No.3500/2006 decided on 29.7.2016, the Hon'ble Apex Court held as follows:-

“9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a



future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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. ” (emphasis supplied).

11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.



*13 The judgment of the High Court is accordingly set aside.
The Civil Appeal shall stand allowed in the above terms.
There shall be no order as to costs.”*

12. The submission of learned counsel for the petitioner is that the reliance placed by the Tribunal on the judgment of '**High Court of Punjab and Haryana and others vs. Jagdev Singh**' is clearly misplaced, inasmuch as in the said case, the facts reveal that an undertaking was given by the respondent therein stating that if the payment made to him initially found to have been made in excess then the same would liable to be adjusted. It was in that background that the Supreme Court has said that in view of the undertaking, the recovery could have been made. Hence, the judgment is clearly distinguishable.

13. He states that the case of the petitioner is clearly covered by the judgment in the case of the **Rafiq Masih & Ors. (Supra)** more specifically (II) of paragraph 18 of the judgment, wherein recovery from retired employees, or the employees who are due to retire within one year, of the order of recovery, is held to be impermissible.

14. On the other hand, learned counsel for the respondents reiterates the stand taken by the respondents before the Tribunal, inasmuch as the instructions have been issued for recovery of the excess amount of Rs. 7,000/- (instead of Rs. 3,200/-) paid to the officers.

15. She states, the Tribunal has rightly relied upon the judgment in the case of '**High Court of Punjab and Haryana and others vs. Jagdev Singh**'. She seeks the dismissal of the present writ petition.

16. We are not in agreement with the submissions made by learned counsel for the respondents. Firstly, the initial instructions were issued by the



Ministry of Finance only on December 23, 2014 and hence, the payment made before that date could have been recovered is an issue. In other words, whether the said O.M shall have prospective effect.

17. The issue has to be seen from the perspective that the amount having been recovered from the Gratuity, whether in terms of the judgment relied upon by the learned counsel for the petitioner in the case of **Rafiq Masih & Ors. (Supra)**, the respondents could have recovered the amount from the gratuity of the petitioner as the petitioner stood retired on August 31, 2015, immediately after the issuance of the O.M. dated December 23, 2014.

18. Though on that day, i.e., December 23, 2014 the petitioner had not retired, but in terms of Clause (II), she was due to retire within one year of the order of December 23, 2014. On this ground itself, the respondents could not have made any recovery from the Gratuity of the petitioner.

19. The plea advanced by learned counsel for the respondents is, the impugned action has been taken by the respondents with regard to similarly placed officers and as such, any order in favour of the petitioner shall open a Pandora's box, as those officers shall also approach this court seeking similar benefit.

20. We say nothing on the submission made by learned counsel for the respondents, inasmuch as the petitioner having approached the Tribunal which had dismissed the O.A. and she has now approached this Court against the order of the Tribunal, which we find is erroneous, as the judgment in **High Court of Punjab and Haryana and others vs. Jagdev Singh** on which the Tribunal has relied upon, has no applicability to the facts of this case and the petitioner is right in relying upon the judgment in **Rafiq Masih & Ors. (Supra)**, wherein (II) squarely attracts to the facts of this case, this writ petition need to be allowed.



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21. As such the order of the Tribunal is set aside. The respondents are directed to refund / release the amount of Rs. 5,19,139/- in favour of the petitioner within a period of two months from today.

22. With the above, the writ petition is disposed of. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

SEPTEMBER 26, 2023/R