



2024:DHC:9185-DB



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

+ **W.P.(C) 8541/2020 and CM APPLs. 27553/2020 & 1818/2021**

UNION OF INDIA & ORS.

.....Petitioners

Through: Ms. Bharathi Raju, Sr. Panel
Counsel

versus

JAI BHAGWAN

.....Respondent

Through: Mr. M.K. Bhardwaj, Ms.
Priyanka M. Bhardwaj, Mr. Maria Mugesh
Kannan H and Mr. Himanshu, Advocates

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

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26.11.2024

C. HARI SHANKAR, J.

1. The respondent was appointed as Junior Engineer (Civil) in the Central Public Works Department¹ on 7 February 1981. On completion of 15 years of service, he was granted financial upgradation to the scale of ₹ 2000-2300-EB-3500. Accordingly, his salary was revised to ₹ 2375/- with effect from 16 March 1996. Under the Assured Career Progression Scheme, he was granted second financial upgradation to the grade of ₹ 10000-15200 with effect from 4 August 2006. Consequent to the acceptance of the recommendations

¹ "CPWD", hereinafter



2024:DHC:9185-DB



of the 6th Central Pay Commission, the revised pay of the respondent was fixed at ₹ 15600-39100 with grade pay of ₹ 6600/-. The respondent was thereafter granted third financial upgradation to the grade pay of ₹ 7600/- under the Modified Assured Career Progression Scheme from 2011. The respondent superannuated on 30 June 2019.

2. By Office Order dated 15 May 2019 issued by the Chief Engineer, CSQ(Civil), it was observed that the respondent had erroneously been granted an increment with effect from 1 July 2008, as a result of which the financial benefit which was given to him with effect from 4 September 2018 was also inadmissible. As a result, the Office Order directed recovery, from the respondent, of the alleged over paid amount.

3. The respondent, as already noted, was due for superannuation one month and a half after the passing of the aforesaid Office Order on 30 June 2019.

4. Aggrieved by the aforesaid action of the petitioner, the respondent moved the Central Administrative Tribunal² by way of OA 2534/2019. The Tribunal, by the impugned order dated 25 October 2019, has set aside the aforesaid order dated 15 May 2019.

5. Mr. Bhardwaj restricts the relief prayed by him before the Tribunal to the aspect of recovery.

² “the Tribunal”, hereinafter



6. On the aspect of recovery, the issue is squarely covered by para 18 of the judgment of the Supreme Court in *State of Punjab v Rafiq Masih*³, which reads thus :

“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.
- (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.”

(Emphasis supplied)

7. Inasmuch as the respondent was due to retire within a month of the passing of the order dated 15 May 2019, the recovery effected by him was clearly in the teeth of the proscription contained in circumstance (ii) envisaged in para 18 of the judgment of the Supreme Court in *Rafiq Masih*.

³ (2015) 4 SCC 334



2024:DHC:9185-DB



8. Ms. Bharathi Raju, learned Senior Panel Counsel for the petitioner, candidly acknowledges this position.
9. Accordingly, without entering into the aspect of re-fixation of pay, the impugned order of the Tribunal is upheld to the extent it quashes the decision of effecting recovery from the respondent.
10. The writ petition stands allowed to the aforesaid extent.
11. Any amount recovered would be refunded within a period of eight weeks from today.

C.HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 26, 2024/yg

Click here to check corrigendum, if any