



2024:DHC:9245-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11044/2023 & CM APPL. 42818/2023**

UNION OF INDIA

.....Petitioner

Through: Ms. Bharathi Raju, Sr. Panel
Counsel.

versus

VIJAY KUMAR SAINI

.....Respondent

Through: Mr. B.S. Jarial, Advocate.

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 30 September 1983. He was promoted on *ad hoc* basis w.e.f² 13 August 2009. A show cause notice was issued to the respondent on 28 November 2019 which stated that he had not passed the Departmental Accounts Exam³ and had erroneously been given the increments from 1 July 2011 to 1 July 2019 amounting to Rs.9,68,737 in violation of OM⁴ dated 5 January 2006 by CPWD Directorate. The OM stated that the second and

¹ "CPWD" hereinafter

² with effect from

³ DAE hereinafter

⁴ Office Memorandum



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subsequent increments are to be released only after passing the DAEs. The respondent was asked to reply as to why the excess payment be not recovered, within five days. Subsequent to the reply submitted by the respondent, the Chief Engineer, CSQ (Civil) issued Office Order dated 12 March 2020, stating that the respondent had erroneously been granted an increment with effect from 1 July 2011 to 1 July 2019. As a result, the office order directed recovery from the respondent of the alleged over paid amount.

2. The respondent, as already noted, was due for superannuation on 31 August 2020, a mere five months after the passing of the aforesaid Office Order on 12 March 2020.

3. Aggrieved thereby, the respondent moved the Central Administrative Tribunal⁵ by way of OA 1419/2020. The Tribunal, by the impugned order dated 13 January 2023, has set aside the aforesaid order dated 12 March 2020.

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

5. 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*⁶, which reads thus:

⁵ “the Tribunal” hereinafter

⁶ (2015) 4 SCC 334



“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.”

6. Inasmuch as the respondent was due to retire within five months of the passing of the order dated 12 March 2020, 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*.

7. Ms. Bharathi Raju, learned Senior Panel Counsel for the petitioner, candidly acknowledges this position.

8. Accordingly, without entering into the aspect of re-fixation of



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pay, the impugned order of the Tribunal is upheld to the extent it quashes the decision to effect recovery from the respondent.

9. The writ petition stands allowed to the aforesaid extent.

10. Any amount recovered would be refunded to the respondent 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