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

% **Date of Decision: 21.12.2018**

+ **W.P.(C.) No. 13470/2018**

SUKHBIR SINGH

..... Petitioner

Through: Mr. Anuj Aggarwal and Tenzing
Thinlay Lepcha, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR.

.....Respondents

Through: Ms. Pooja Chandra and Mr. Sumeet
Kaul, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K.CHAWLA

A.K.CHAWLA, J. (ORAL)

1. By the petition filed under Section 226 of the Constitution of India, the petitioner seeks issuance of a writ for setting aside of the order dated 13.08.2018 passed on the review application, and the order dated 04.03.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in short, 'CAT', whereby, the Original Application No.2914/2013 made by the petitioner seeking declaration to the effect that the Recruitment Rules for the post of Medical Record Officer had no statutory force for the purposes of

grant of second financial upgradation and, in the alternative, on parity with other employees similarly placed with an interim relief restraining the respondents to effect recovery of the amount already paid w.e.f. 01.03.2003 on the re-fixation of his pay scale vide order dated 30.08.2012, were disposed off.

2. Concisely, the facts relevant for the disposal of petition are that the petitioner alongwith two others had approached CAT with an application, pertinently and in effect, for the grant of financial upgradation and restraining the respondents from recovery of the amount already paid w.e.f. 01.03.2003 on the re-fixation of his pay scale vide order dated 30.08.2012. OA so made came to be disposed of by CAT with the direction that any excess payment made to the said applicants be not recovered keeping it open to the respondents to examine their case for financial upgradation from the date they acquired the requisite qualifications. Any advertence to the other issues agitated in the OA but for the recovery made as an excess payment made w.e.f. 01.03.2003, is not required inasmuch as the applicants including the petitioner, did not press the OA on those counts. OA as such came to be disposed of on 04.03.2015. As for the case of the petitioner, he superannuated on 31.05.2013 and the recovery of the excess payments made to him came to be effected from him in June, 2013 from his retiral benefits. In the given circumstances, the petitioner made RA no. 3/2018. This RA came to be dismissed by CAT with the observation that while disposing of OA, it had applied the ratio of the judgment of the Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.*, (2015) 4 SCC 334 in a particular manner without any specific direction for refund of the money

already recovered. Aggrieved thereof, the petitioner has approached this court by way of the instant writ petition.

3. It is not in dispute that the petitioner, who was a Group 'C' employee, was paid salary in excess w.e.f. 01.03.2003 and that came to be recovered from his retiral benefits on his superannuation on 31.05.2013. Question for consideration before this court is therefore limited to the aspect as to whether any recovery of the excess payments made to him w.e.f. 01.03.2003 could be made from him keeping in view the ratio of the judgment of *Rafiq Masih* (supra) or not. In *Rafiq Masih* (supra), the Supreme Court *inter alia* summarized the situations, where the recoveries by the employers, would be impermissible in law, as follows :

"(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."

4. Facts and circumstances of the case out rightly attract situation (i), to say, that the recovery effected from the petitioner was impermissible in law.

When that was so, we do not see any reason as to why CAT should have hesitated to extend relief to the petitioner, which was simply beneficial to the interest of a Group 'C' employee and reject it on a technicality. Suffice to say, a review is entertainable, when there is an apparent error of law.

5. In view of the foregoing, we allow the writ petition and direct the respondents to refund the excess payment towards salary made to the petitioner, which came to be recovered from his retiral benefits in June, 2013 within four weeks from today, failing which the amounts so due shall interest @ 8% p.a. Writ petition stands disposed of accordingly.

A.K.CHAWLA, J.

VIPIN SANGHI, J.

DECEMBER 21, 2018

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