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

+ W.P.(C) 11639/2017

SMT. SYAMALI BISWAS Petitioner
Through: Mr. Manish K.Bishnoi with Ms.
Tanvi Sapra, Advs.

versus

D.G, ALL INDIA RADIO AND ORS. Respondents
Through: Mr. S.M. Arif with Ms. Shabnam
Perween, Mr. S.M. Aatif, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **12.11.2018**

At the outset, learned counsel for the petitioner submits that there is typographical error so far as the first two prayers made in the writ petition are concerned. Learned counsel submits that the Tribunal has already granted the reliefs mentioned as the first two reliefs in the writ petition. He submits that the grievance of the petitioner relates to the Tribunal not granting interest on the amount of recovery effected from the petitioner's retiral dues of Rs. 6,90,104/-. Thus, this petition is confined only to the third relief prayed in the writ petition.

The petitioner was serving as Senior Engineering Assistant at the time of her retirement. She retired on 31.12.2014. On 29.12.2014, the Senior Accounts Officer of the All India Radio issued a communication to the

DDO/HOD in relation to the petitioner, that her pay fixation was not done as per the revised pay Rules, 2008 and that the re-fixation of pay along with revised calculation sheet be re-submitted. This communication also stated that overpaid amount of pay and allowances may be ascertained. On 09.01.2015 i.e. after the retirement of the petitioner, her pay was refixed by withdrawing the benefit granted to her under the MACP Scheme and this order also stated that the over payment made, if any, either in the form of arrears or otherwise, shall be recovered from the amount due to the person concerned i.e. the petitioner without notice.

Learned counsel for the petitioner points out that the orders dated 29.12.2014 and 09.01.2015 were not preceded by any show cause notice.

Aggrieved by the aforesaid two orders, the petitioner approached the Tribunal which has found favour with the petitioner. The Tribunal has relied upon the decision of the Supreme Court in *State of Punjab V. Rafiq Masih (White Washer) etc.* 2014 (8) SCALE 613, while observing that the recovery could not be effected from the petitioner. The Tribunal has also found favour with the petitioner - that the petitioner was entitled to financial up gradation as granted to her.

We may observe that the All India Radio has also preferred another writ petition being W.P. (C.) No. 2034/20174, which is listed today. In that petition, the petitioner/ All India Radio has assailed the order of the Tribunal in as much, as, the Tribunal has upheld the grant of grade pay of Rs.4800/- with effect from 01.09.2008, and grade pay of Rs.5400/- with effect from 01.07.2010.

In respect of the said petition, the submission of the learned counsel for the petitioner – All India Radio is that on reconsideration, the claim of

the respondent for grant of grade pay of Rs. 4800/- with effect from 01.09.2008 has been found to be admissible. Learned counsel for AIR submits that the contest is now only in relation to grant of grade pay of Rs. 5400/- with effect from 01.07.2010.

Having heard the learned counsels, we are of the considered view that the grievance raised by the original applicant- Smt. Syamali Biswas with regard to denial of interest on the amount recovered from her is justified. The case of the petitioner is squarely covered by the decision of the Supreme Court in Rafiq Masih (supra). In paragraph 10 of this decision, the Supreme Court has set out few situations, wherein recovery by the employer will not be permissible in law. We may observe that the context in which the Supreme Court held the recovery to be impermissible, was that over payment had been made to the employee without any fault of the employee and due to the mistake of the employer itself.

It is not the case of the AIR that the alleged over payment due to the alleged wrong fixation of pay was on account of any act/ omission on the part of the petitioner/ original applicant.

In the present case, the Tribunal has found in favour of the original applicant that she is entitled to financial upgradation as taken note of hereinabove.

As noticed above, today, learned counsel for the employer- All India Radio concedes that she is entitled to upgradation of grade pay of Rs. 4800/- with effect from 01.09.2008. Therefore, assuming for the sake of argument only that she may not be found to be entitled to the upgradation of grade pay of Rs. 5400/- with effect from 01.07.2010, in any event, no recovery could be made from her at the time of her retirement in view of the decision in

Rafiq Masih (Supra). The second category of cases in which recovery cannot be effected - as noticed in *Rafiq Masih* (Supra), are cases of retired employees or employees who are due to retire within one year of the order of recovery. In the present case, the order of recovery is passed after the retirement of the petitioner.

Learned counsel for the petitioner/ original applicant submits that the conduct of the respondent is also discriminatory in as much as there are large number of cases where no such recovery was affected by the petitioner. He places reliance to the information gathered under the Right to Information Act in this regard.

Consequently, we allow the petition and direct the respondent to forthwith release the recovered amount form the gratuity of the petitioner along with interest @ 9% per annum from the date of recovery till payment. The amount shall be released within the next two weeks. We make it clear that this order shall not come in the way of All India Radio, in so far as its submissions in W.P. (C.) No. 2034/2017 are concerned.

The interim order passed in W.P. (C.) No. 2034/2017 stand modified to the aforesaid extent.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 12, 2018

N.Khanna