



2024:DHC:8083-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ LPA 1033/2024, CM APPLs. 60480/2024, 60481/2024 & 60482/2024

MMTC LTD

.....Appellant

Through: Mr. Abhishek Bhardwaj, Adv.

versus

P. K. DAS & ORS.

.....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

**JUDGMENT (ORAL)**

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**15.10.2024**

**C. HARI SHANKAR, J.**

1. Respondents 1 and 2 were Senior Executives on the Board of the appellant MMTC Ltd. Respondent 1 resigned from the post of Executive Director on 18 February 2016 and Respondent 2 retired as Director on 31 December 2016.

2. The Executive Committee of the Board of Directors of the MMTC had, in a meeting convened on 1 March 1995, followed by a circular on 11 September 1995, approved the grant of certain facilities



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and allowances to Board/ Senior Level Executives of MMTC, for maintaining residential offices which included reimbursements of electricity charges and attendant's wages. Pursuant to this, later, on 5 October 2004, a further circular was issued by the MMTC, approving further facilities for Senior Executives at their residences / offices which included items such as furniture, AC, curtains, and hiring of attendants on reimbursement basis.

3. The computation of these facilities, and the amount of reimbursement available against avilment of the said facilities, need not detain us. Suffice it to state that, on 26 November 2008, the Department of Public Enterprises<sup>1</sup>, Ministry of Commerce and Industry issued an Office Memorandum<sup>2</sup>, revising the pay scales of Executives at and below Board Level in Central Public Sector Enterprises<sup>3</sup> w.e.f. 1 January 2007. We are not concerned with this aspect of the OM either. What we are concerned with is the further dispensation, in the said OM, to the effect that allowances and perks admissible to different categories of Executives would be as per the decision of the Board of Directors of the concerned CPSE, but would be subject to a maximum ceiling of 50% of the basic pay of the Executives.

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<sup>1</sup> "DPE", hereinafter

<sup>2</sup> "OM", hereinafter

<sup>3</sup> "CPSE", hereinafter



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4. Following the aforesaid circular, it is not in dispute that Respondents 1 and 2 never availed more than the perks in excess of 50% of their basis pay. The controversy pertains to the perks availed by Respondents 1 and 2, in terms of the decision taken in the minutes of the meeting of the Board of the MMTC on 1 March 1995 and the circulars dated 11 September 1995 and 5 October 2004, to the extent they were in excess of 50% of the basic pay of Respondents 1 and 2.

5. The aforesaid OM dated 26 November 2008 was followed by an OM dated 21 January 2016, whereby the DPE directed the MMTC to recover, from their Senior Level Executives, the perks availed by them to the extent they were in excess pay of 50% of their basic pay.

6. Significantly, following the said directive, the Board of Directors of the MMTC convened on 19 August 2016. It is an admitted position that, in the said meeting, the Board was of the opinion that the recovery of the said amounts from their Senior Executives, including Respondents 1 and 2 at that stage would be illegal. This decision was reiterated in the 428<sup>th</sup> meeting of the Board of MMTC, convened on 14 September 2016.

7. The appellant, however, appears to have been pressurized by a directive issued by the DPE. Following the aforesaid decisions taken in the Board meeting of the MMTC, the DPE again wrote to the



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MMTC on 9 May 2017 directing the MMTC to recover, from their Senior Executives, payment towards perks, availed by them in excess of 50% of their basic pay prior to the issuance of the OM dated 26 November 2008.

8. Buckling under the aforesaid pressure, the appellant addressed show cause notices to Respondents 1 and 2, calling upon them to pay back ₹ 7,82,379/- in the case of Respondent 1 and ₹ 8,51,391/- in the case of Respondent 2. Thereafter, from Respondent 1 an amount of ₹ 7,64,487/- was recovered by the appellant and, from Respondent 2, the entire amount of ₹ 8,51,391/- was recovered.

9. Aggrieved thereby, Respondents 1 and 2 instituted WP (C) 12237/2022 before this Court, in which a learned Single Judge has come to pass, on 22 July 2024, the judgment under challenge in this appeal.

10. The learned Single Judge has, in no uncertain terms, set aside the decision to recover the aforesaid amounts of perks paid to Respondents 1 and 2 in excess of 50% of their basic pay. In so holding, the learned Single Judge has observed that Respondents 1 and 2 had availed the said perks as per the decisions taken in the Board meeting and the circulars issued by the MMTC itself. The learned Single Judge has also placed reliance on the judgment of the



Supreme Court in *State of Punjab v Rafiq Masih (White Washer)*<sup>4</sup>, paras 18 (ii) and (iii) whereof would disallow any such recovery from Respondents 1 and 2.

**11.** Paras 12, 13, 17 and 18 of the impugned judgment of the learned Single Judge may be reproduced thus:

“12. The genesis of the allowances and/or facilities/perks in question lies in the decision taken in the Meeting of the Executive Committee of MMTC held on 01.03.1995 and Circulars issued on 11.09.1995 and 05.10.2004. Indisputably, the reimbursements to the Senior Executives of MMTC were with the approval of the Board of MMTC and this position, insofar as the Board decision is concerned, never changed. Significantly, by O.M. dated 26.11.2008, pay scales of Board Level and below Board Level Executives and non-unionised Supervisors in CPSEs were revised from 01.01.2007 and in respect of certain allowances and perks, it was provided that the Board of Directors will decide their admissibility to different categories of the Executives, subject to a maximum ceiling of 50% of the Basic Pay and these allowances were enumerated in para 10 of the O.M. There was, however, no mention of the allowances or facilities introduced in the year 1995. These allowances were admittedly continued to be paid to the Senior Executives for over 02 decades and which is why the Board of Directors in the 426th and 428th meetings convened on 19.08.2016 and 14.09.2016 respectively, discussed on the Agenda of discontinuation of perks and allowances beyond 50% of Basic Pay of Executives of MMTC and noted as under:

“Extract of Minutes of Item No.2.2 of 426th Meeting of Board of Directors held on 19.8.2016

Item No. 2.2: Payment of perks, allowances and other benefits beyond 50% of basic pay to CMD, Directors and CGM in violation of DPE guidelines - reg. - as per note of

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<sup>4</sup> (2015) 4 SCC 334



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Director(P) dtd. 10.8.2016.

Government Nominee Directors on the Board desired that the two Independent Directors may discuss and deliberate amongst themselves and come back to the Board for final decision in the matter. Functional Directors and CMD being 'interested directors' did not participate in the discussions.

Extract of Minutes of Item No.2.5 of 428th Meeting of Board of Directors held on 14.9.2016

Item No 2.5: Payment of perks, allowances and other benefits beyond 50% of basic pay to CMDs, Directors and CGM in violation of DPE guidelines -as per note of Director(P) dtd.7.9.2016.

The Note from Director(P) dtd. 7.9.2016 was discussed by the Independent Directors jointly and it was felt proper and fit to waive off the recovery of the perks already paid to the officers prior to 1.2.2016 both in case of present and past employees. However, in view of the specific wordings in the communication dtd. 21.1.2016 of Dept. of Commerce, MOC&I "to review and recover the amount", the Board directed that the matter be represented with Board's view to the Ministry of Commerce & Industry for final decision."

13. Chronology in the affidavit filed by MMTC indicates that the Board of Directors of MMTC were not inclined to discontinue the perks and allowances and/or initiate recoveries, but the impugned action of recovery was initiated under the directive of Respondent No.2 inasmuch as the Board Members were conscious of the fact and realized that these benefits had been extended as a practice for the last many years and were based on functional requirements for improving the working standards and performance of the organization as a whole. The crucial points that emerge from the above narrative are that: (a) decision to extend the perks/facilities provided to the Petitioners for maintenance of their official residences was a well thought of and deliberated decision, approved by the Board of Directors of MMTC; (b) decision was taken after deliberations on the facts and figures placed before the Board in a detailed Agenda; and (c) the Board of MMTC never changed its decision to reimburse the electricity/attendant charges



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or effect recoveries until a mandate was issued by Respondent No.2. The Board was of the view that it would be unfair to make recoveries from employees who had retired and therefore, recoveries should be waived but as DPE and Respondent No.2 disagreed, a decision was taken by MMTC to discontinue the perks and allowances and effect recoveries after issuing show-cause notices to the Executives including the Petitioners.

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17. Finally, the Supreme Court in *Rafiq Masih (supra)*, delineated a few situations where recoveries would be 'impermissible in law' while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery. Relevant paras are as follows:-

"13. First and foremost, it is pertinent to note, that this Court in its judgment in *Syed Abdul Qadir v. State of Bihar*<sup>5</sup> recognised, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of

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<sup>5</sup> (2009) 3 SCC 475



those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

14. In this context, reference may also be made to the decision rendered by this Court in *Shyam Babu Verma v. Union of India*<sup>6</sup>, wherein this Court observed as under:

“11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1-1-1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1-1-1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.”

It is apparent, that in *Shyam Babu Verma*, the higher pay scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984 i.e. after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.

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<sup>6</sup> (1994) 2 SCC 521



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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)

18. Therefore, under the binding dictum of the Supreme Court, recoveries are impermissible where they are sought to be made where the excess payments have been made for a period in excess



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of five years, prior to the issue of recovery order. Cases of the Petitioners, in my view, squarely fall in the illustration (iii) of paragraph 18 of the judgment in **Rafiq Masih (supra)**. Petitioner No.2 retired on 31.12.2016 and his case also falls under illustration (ii) thereof. If the date of the recovery letters is taken into consideration, i.e., 26.06.2020, then case of Petitioner No.1 also falls in illustration (ii) inasmuch as he resigned from MMTC on 18.12.2016 for appointment as a Board Member in STC wherefrom he retired on 31.03.2019.”

**12.** Aggrieved by the said decision, MMTC is in appeal before this Bench.

**13.** From a reading of the appeal, the *prima facie* impression that is conveyed to this Court is that it is an appeal which is essentially motivated by fear of adverse repercussions from the DPE, rather than an appeal which really contests on merits the justification of recovery of the amounts from Respondents 1 and 2. There is repeated reference, in the appeal, to the fact that, if the appellant did not act as the DPE desired it to act, the DPE would take adverse actions against the appellant.

**14.** We have heard Mr. Abhishek Bhardwaj, learned Counsel for the appellant and perused the record.

**15.** Having heard Mr. Abhishek Bhardwaj, we find no reason whatsoever to interfere with the impugned judgment of the learned Single Judge. Though, the appeal repeatedly states that Respondents 1



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and 2 availed of perks in excess of that permissible as per the OM issued by the DPE, that fact is not correct. The perks availed by Respondents 1 and 2 were as per the decision taken in the Board meeting of the MMTC which convened on 1 March 1995 followed by circulars dated 11 September 1995 and 5 October 2004 of the MMTC. They were, therefore, availed as per the extant policy of the MMTC at that point of time.

**16.** Respondents 1 and 2, therefore, were clearly not at fault in availing the said perks.

**17.** We are not going into the justification of the decision of the DPE to restrict the perks payable to Senior Executives to 50% of their basic pay. Suffice it to state that, even if the said decisions were to be treated as being in order, it would not justify, in any manner known to law, recovery of the perks which have been availed by the Senior Executives in accordance with the decision taken by the MMTC itself and the circulars issued by it.

**18.** We therefore, find ourselves entirely in agreement with the views expressed by the learned Single Judge insofar as the justifiability of the decision of DPE, directing recovery of the said perks from the Senior Executives is concerned.



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19. We queried of Mr. Abhishek Bhardwaj as to whether he had any answer to the applicability of the judgment of the Supreme Court in *Rafiq Masih*. He candidly acknowledges that he does not.

20. We are in agreement with the learned Single Judge that the facts of the present case directly call into application illustrations (ii) and (iii) of para 18 of *Rafiq Masih* and therefore disentitle the appellant to recover the aforesaid amount from Respondents 1 and 2.

21. In that view of the matter, no occasion arises for this Bench to interfere with the judgment of the learned Single Judge. The impugned judgment is, therefore, upheld in its entirety.

22. The appeal stands dismissed in *limine* with no order as to costs.

**C. HARI SHANKAR, J.**

**DR. SUDHIR KUMAR JAIN, J.**

**OCTOBER 15, 2024/aky**

*Click here to check corrigendum, if any*