

Chief Justice's Court

Case :- WRIT - A No. - 6928 of 2025

Petitioner :- Union of India and 2 others

Respondent :- Sudhir Kumar and 29 others

Counsel for Petitioner :- Manoj Kumar Singh

Counsel for Respondent :- Ashish Kumar Srivastava, Sunil

with

Case :- WRIT - A No. - 7005 of 2025

Petitioner :- Union of India and 2 others

Respondent :- Amit Kumar and 102 others

Counsel for Petitioner :- Manoj Kumar Singh

Counsel for Respondent :- Ashish Kumar Srivastava, Sunil

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Kshitij Shailendra,J.

1. Both the writ petitions arise out of consolidated judgment and order dated 15.01.2025, whereby the Central Administrative Tribunal, Allahabad Bench, Allahabad ('the Tribunal') has allowed two Original Applications being O.A. Nos. 746 of 2023 and 611 of 2023 filed by the respondents of these writ petitions. Since both the Original Applications had arisen out of identical facts and a common order passed thereon is impugned herein, both the writ petitions are being decided by this common judgment.

2. Brief facts of the case are that the respondents are deployed in different Engineering Departments of the petitioners. Pursuant to the Railway Board's letter dated 21.06.1990, they were allowed incentive bonus at a flat rate of 15% of their basic pay. In the month

of December, 2021, certain recoveries were made by way of deductions reflected in the pay slips of the respondents. Being aggrieved, representations were submitted by the respondents, which were rejected by an order dated 24.01.2023 on the ground that the recovery had been effected in compliance of Board's letter dated 16.03.2004 towards excess payment of incentive bonus. By another letter dated 26.06.2003, the Department computed the period of recovery with effect from July, 2017 to May, 2021 in relation to the employees working w.e.f. 01.03.2004 to 30.06.2017. It were these orders that were challenged by the respondents before the Tribunal.

3. The defence of the Department before the Tribunal was that the Vigilance Department, vide its letters dated 01.04.2021 and 07.04.2021, had issued directions to the competent authority to recover the amount and since the incentive bonus was erroneously overpaid to the respondents, there was no illegality in issuing the recovery orders or making deductions from their pay slips.

4. The Tribunal, after analysing rival contentions and placing reliance upon the judgment of Hon'ble Supreme Court in **State of Punjab and others vs. Rafiq Masih (White Washer) and others: (2015) 4 SCC 334**, allowed the Original Applications holding that recovery at such a belated stage is contrary to the parameters laid down in **Rafiq Masih (supra)**. The Tribunal issued a direction to the petitioners not to make further recovery from the respondents and, further, refund the amount already recovered from them alongwith simple interest at the rate of 6% per annum.

5. Assailing the orders impugned, learned counsel for the petitioners has made only two submissions; *firstly*, that since the incentive bonus was overpaid to the respondents, the Department was justified in proceeding to recover the same and, *secondly*, that the

judgment in **Rafiq Masih (supra)** would have no application in the present case, inasmuch as the amount sought to be recovered or already recovered being too meagre a sum, no hardship would be caused to the respondents who are otherwise receiving a handsome amount of salary, in comparison where to, the amount sought to be recovered is quite low.

6. Per contra, learned counsel for the respondents supports the order impugned and submits that the recovery sought to be made in the year 2021 by enforcing or implementing Board's letter dated 16.03.2004 was a highly belated and unwarranted action and since the respondents belong to Group-C service, the Tribunal has not erred in granting reliefs to the respondents by correctly applying the law laid down in **Rafiq Masih (supra)**.

7. Having heard learned counsel for the parties, we find both the contentions raised by learned counsel for the petitioners as unacceptable.

8. Admittedly, the respondents are working on Group-C posts and once it is the admitted case of the petitioners that the action of recovery was undertaken pursuant to the Board's letter dated 16.03.2004 after a period of 17 years, the said action is clearly hit by the ratio laid down in **Rafiq Masih (supra)**.

9. As far as the question of hardship is concerned, on perusal of various pay slips annexed as Annexure No. A-3 to the Original Application, it reflects that sums to the tune of Rs.39,507/-, 52,525/-, 41,088/-, 58,310/-, 25,472/-, 68,438/-, 48,049/-, 42,455/-, 59,185/- and 76,318/- and so on were sought to be recovered or actually recovered by the Department. These sums cannot be said to be too meagre so as to examine the contention raised by learned counsel for the petitioners

based upon the plea of alleged non-hardship to the respondents. Even otherwise, we are not inclined to accept the argument advanced on that line, inasmuch as the same would amount to clear misreading and misinterpretation of the judgment of Hon'ble Supreme Court in **Rafiq Masih (supra)**. Though it is true that in seventh paragraph of the said judgement, an observation was made that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees can only be interfered with in cases where such recovery would result in hardship of a nature, which would far outweigh the equitable balance of the employer's right to recover, the Hon'ble Supreme Court, in subsequent paragraphs of the report, held that '*if the effect of the recovery from the concerned employee would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.*' After observing so, the Hon'ble Supreme Court, in paragraph 12 of the report, has clearly laid down as under:-

“12. 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 employees belonging to Class-III and Class-IV service (or Group C and Group D service).
- (ii) Recovery from 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."

10. The Hon'ble Supreme Court, after analysing the law on the aspect clearly enumerated the circumstances where the recovery by the employers would be impermissible and, therefore, to claim that in a case like the present, the Tribunal was required to consider the hardship, cannot be accepted.

11. In the present case, since the respondents are admittedly working in Group-C posts, even if it is found that incentive bonus was paid to the respondents in excess of what they were entitled to, the situation would not be favourable to the petitioners so as to justify their action of recovery, inasmuch as the judgment in **Rafiq Masih (supra)** deals with those very situations where the employee receives payment in excess to his entitlement and recovery is issued at a point of time when it becomes impermissible in law. Therefore, the submissions made by the learned counsel for the petitioners that since the respondents were not entitled to receive incentive bonus and, hence, the recovery was justified, has no substance, either on facts or on law.

12. For all the aforesaid reasons, we are not inclined to interfere with the order of Tribunal. The writ petitions have no merits and are, accordingly, **dismissed**.

Order Date :- 2.7.2025

AKShukla/-

(Kshitij Shailendra, J) (Arun Bhansali, CJ)