

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

Judgment reserved on November 06, 2015

Judgment delivered on December 07, 2015

+ W.P.(C) 277/2015 & CM No. 430/2015
RENU GUPTA

..... Petitioner

Through: Ms. Amita Gupta, Adv.

versus

UNIVERSITY OF DELHI & ANR

..... Respondent

Through: Mr.Mohinder J.S.Rupal, Adv.
for R1
Mr.Saurabh Banerjee, Adv.
for R2

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the Study Leave Agreement dated October 26, 1987 and further to the decision of the respondent No.2 College to deduct the leave salary paid to the petitioner for the period October 26, 1987 to October 26, 1990 from the salary of the petitioner.

2. This is the second round of litigation inasmuch as the petitioner had earlier filed a Writ Petition No.3746/2013, which was disposed of, on the statement made by the learned counsel for the petitioner withdrawing the petition, realising that the petitioner had not challenged

the Study Leave Agreement executed by the petitioner on October 26, 1987. The interim order granted in that petition, on May 30, 2013, was directed to be continued for a period of four weeks.

3. It was contended by Ms. Amita Gupta, that the petitioner was appointed as a Lecturer in the respondent No.2 College on September 7, 1978. According to her, in terms of para 5 of the appointment letter dated September 4, 1978, she was to be governed by the Ordinances and Rules in force in Delhi University. In the year 1987, petitioner got herself registered for Ph.D on the topic *“India’s Trade and Economic Relations with Middle East Countries with special reference to Soudi Arabia, Iraq and U.A.R.”* and for that, the petitioner took study leave on October 26, 1987 and rejoined the College on October 26, 1990 and since then serving the College continuously till date. It is her case, that in terms of the Delhi University Rules effective from July 19, 1977, the salary of study leave duration can be recoverable from a Teacher only on the following grounds; (i) who fails to rejoin the services on the expiry of the said leave; (ii) who rejoins the services of the University but left the services without completing the prescribed period of service after rejoining the services; (iii) who, within the said period, is dismissed or removed from the services by the University. She states, that the respondent No.2 College got unauthorisedly, illegally and negligently

the Study Leave Agreement dated October 26, 1987 signed.

4. According to her, the petitioner had visited numerous Libraries and Trade Centres during the course of her research and got membership of the Indian Institute of Foreign Trade on December 27, 1988 and paid the membership fee as well. In other words, the petitioner was working very seriously on her Ph.D topic, as is evident from the six monthly reports of her Supervisor. Her Guide had also certified, the petitioner's progress was satisfactory. Her study leave, which was initially for a period of one year, was extended for two more years on the basis of certificate of the Supervisor under whom she was working. It was because of unexpected problem in getting study material due to Iran-Iraq war, which lasted till 1988-1989 and subsequently by trade and economic sanctions on Iraq by U.N.O from 1990-2003, the petitioner could not get sufficient and relevant data to sum-up her research work. Thus, she could not complete her research work and submit her thesis. Ms. Gupta, also states that the petitioner's problem was further aggravated when her one and a half year son started getting epilepsy fits in the month of June 1989. Her son, who is now 27 years of age, is fully dependant on his parents for his very need. He has been diagnosed with 50% of disability. Ms. Gupta would stress on the fact, that the petitioner on joining the College immediately after three years, informed the

College Principal about having unexpected problem in getting study material due to Iran-Iraq war, which lasted till 1988-1989 and further by trade and economic sanctions on Iraq by U.N.O. from 1990-2003 and thus she could not get sufficient and relevant data to sum-up her research work. Her case is that, now suddenly after almost 22 years, on October 19, 2012, the Dy. Registrar, University of Delhi respondent No.1 has written to respondent No.2 College that cases of teachers, who are unable to complete their studies on expiry of study leave granted to them before the year 2002 may be dealt with, by the respective governing bodies of the Colleges at their own level in accordance with the conditions incorporated in the Study Leave Agreement executed by them. On coming to know, the impending action of the governing body of the College, the petitioner on February 16, 2013 gave a letter to the Principal explaining her conditions and her helplessness under which she could not complete her Ph.D studies. In fact, on the same day, a decision was taken by the governing body of the respondent No.2 College to recover the payments made during the study leave period from the salary of the petitioner. She made a representation on March 11, 2013 in response to the decision of the governing body to recover the salary paid to her during study leave period. Her meeting with the Dean of Colleges and Registrar of Delhi University and also the Chairman of the

governing body of the College did not show any positive results. In the month of March 2013, first instalment was deducted from her salary. The Staff Association had also represented to the Principal of the College but till date no favourable action has been taken. It is her case, that in the absence of any Rules, para-materia to the stipulation in the Study Leave Agreement, the Teachers who are unable to submit their Ph.D thesis, complete their studies within the period of study leave or have failed to rejoin the College on expiry of the study leave, the College can't recover the said amount. She would state, such a stipulation in the Study Leave Agreement dated October 26, 1987 is bad and did not have the sanction of the Rules and hence, liable to be set aside. She would rely upon the judgment of the Supreme Court in the case of ***State of Punjab vs. Rafiq Masih (2015) 4 SCC 334***.

5. On the other hand, Mr.Saurabh Banerjee learned counsel for the respondent No.2 College does not dispute the grant of study leave to the petitioner. He would refer to the communication received from the University on October 19, 2012. He would also rely upon the Study Leave Agreement dated October 26, 1987, which stipulate, a Teacher unable to complete her study during the period of study leave and no further leave is granted to her, in such a case, the College can recover the amount spent on the Teacher during the study leave. He would deny that

the petitioner was forced to sign the Study Leave Agreement. He also states that the same has been signed by the petitioner with open eyes and she is estopped from challenging the said Agreement now after a period of 25 years. According to him, even the amended revise Study Leave Rules, 2002, which have been adopted by the Executive Council, contemplate the recovery of the study leave in the eventuality of a Teacher unable to complete his studies within the said period, shows the stipulation in the Agreement was justified, even though the Rules did not stipulate so at the relevant time.

6. Mr. Mohinder J.S. Rupal, learned counsel for the respondent No.1, would justify the action of the University in writing to the Colleges for taking action for recovery in accordance with the Study Leave Agreement. He states, that not only this case, there are other cases also where the recovery has to be effected. He would lay stress on the fact that the Study Leave Agreement, the terms of which were agreed upon and signed by the petitioner, the respondent College is empowered under the Agreement for effecting recovery of expenses incurred by them. According to him, the Study Leave Rules, as applicable at the relevant time, never debarred the College from imposing a condition of recovery from the salary of a teacher, who has availed the study leave but has not completed the studies. The Colleges were well within their right to

impose such conditions, even if Leave Rules of the University of Delhi were silent on the said aspect. The reasoning given by the petitioner, that she was not able to complete the studies due to the Iran-Iraq war, economic sanctions and because of the medical condition of her son, is not borne out from the record produced by the petitioner before the College/University. He states, the stand of the petitioner is inconsistent. According to him, at no point of time, did the petitioner highlight her personal problem, which affected her study. Had she pointed out, possibly her study leave could have been cancelled. Rather, the certificate issued by her Guide shows, she was working on the topic for her thesis diligently. If that be so, the very ground, on which the extension was sought is doubted. He would rely upon the judgment of the Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (2014) 8 SCC 883 (judgment No.1)*. He has also relied upon the judgment of the Supreme Court in the case of *Sant Longowal Institute of Engineering and Tech. and anr vs. Suresh Chandra Verma (2013) 10 SCC 411* and *(2012) 8 SCC 417 Chandi Prasad Uniyal and ors vs. State of Uttarakhand*. He also refers to the judgment of *State of Punjab Vs. Rafiq Masih (judgment No.2)*.

7. Having heard the learned counsel for the parties, the first and foremost question, that would arise is that, whether the petitioner can

challenge the Study Leave Agreement dated October 26, 1987 at this point of time. The said Agreement was signed by a Teacher, who is M.Phil, who has been working with the College/University for last many years and who intended to do her Ph.D, surely knew, the contents/repercussion of the Agreement, which she had to sign. No doubt, there was no Rule in place, which stipulated that if the Teacher fails to complete the study during the study leave and no further leave of any kind is granted to her, the amount of study leave granted to her shall be recoverable by the College. The petitioner can't take benefit of such a stipulation being absent in the Rules. The College having prescribed such a condition and having been accepted by the petitioner and remain unchallenged till the filing of the petition, it is too late in the day for the petitioner to challenge the very Agreement. I note for benefit, the following conclusion of the Supreme Court in ***Sant Longowal Institute of Engineering and Tech. and anr (supra):-***

“15. The above mentioned provision has a laudable object to achieve. A Government servant or person like the Respondent is given study leave with salary and allowances etc. So as to enable him to complete the course of study and to furnish the certificate of his successful completion, so that the institute which has sanctioned the study leave would achieve the purpose and object for granting such study leave. The purpose of granting study leave with salary and other benefits is for the interest of the Institution and also the person concerned so that once he comes back and joins the

institute the students will be benefited by the knowledge and expertise acquired by the person at the expense of the institute. A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute. In other words, such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in public interest. Public money cannot be spent unless there is mutual benefit. Further, if the period of study leave was not extended or no decision was taken on his representation, he could have raised his grievances at the appropriate forum.”

8. Now the only question that arises for consideration is, whether the College is within its right to make a recovery from the salary of the petitioner, the leave salary of the period October 26, 1987 to October 26, 1990. There is no dispute that the petitioner had not completed her study nor the College had taken steps to recover the amount in terms of the stipulation in the Study Leave Agreement dated October 26, 1987. Almost 25 years have elapsed pursuant to the Agreement and 22 years pursuant to her joining back the College after the study leave. In fact, it appears that the College had treated this issue as a closed one till it received communication dated October 19, 2012 from the University. The issue of recovery of benefits given to the employees, contrary to Rules, has been the subject-matter of various decisions of the Supreme Court. The reliance placed by the learned counsel for the petitioner on

the judgment of the Supreme Court in the case of *State of Punjab vs. Rafiq Masih* (judgment no.2), which was decided on December 18, 2014, wherein the Supreme Court after discussing the position of law has held that in the following situations, the 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 employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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.”

9. It is noted that, before the Supreme Court has rendered the judgment in the *State of Punjab vs. Rafiq Masih* (judgment no.2) on December 18, 2014, the said case was referred to a larger Bench of three Hon'ble Judges after the two Hon'ble Judges noted the difference of

views expressed in the cases of *Shyam Babu Verma and ors vs. Union of India* (1994) 2 SCC 521 and *Sahib Ram Verma vs. Union of India* (1995) Suppl. 1 SCC 18 on one hand and on the other hand in *Chandi Prasad Uniyal and ors vs. State of Uttarakhand* (2012) 8 SCC 417. The reference was answered by the three Hon'ble Judges on July 8, 2014 which is reported as (2014) 8 SCC 883 (*judgment No.1*), wherein the Supreme Court in paras 9, 10, 11 & 12 has stated as under:-

“9. In our view, the law laid down in Chandi Prasad Uniyal's case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court Under Article 142 of the Constitution, but in the subsequent decision this Court Under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Article 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provision speak of the powers of this Court, the former vest a plenary jurisdiction in supreme court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a Court or Tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged Under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing 'complete justice' in any cause or matter. The word 'complete justice' was fraught with uncertainty

until Article 142 of the Constitution received its first interpretation in Prem Chand Garg v. Excise Commissioner, U.P. : AIR (1963) SC 996 which added a rider to the exercise of wide extraordinary powers by laying down that though the powers are wide, the same is an ancillary power and can be used when not expressly in conflict with the substantive provisions of law. This view was endorsed by a Nine-Judges Bench in Naresh Shridhar Mirajkar v. State of Maharashtra : (1966) 3 SCR 744 reiterated by a Seven Judge Bench in A.R. Antulay v. R.S. Nayak: (1988) 2 SCC 602 and finally settled in the Supreme Court Bar Association v. Union of India : (1998) 4 SCC 409.

10. Article 136 of the Constitution of India, confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special jurisdiction and can be best described in the words of this Court in Ramakant Rai v. Madab Rai : (2003) 12 SCC 395, "It is a residuary power, it is extraordinary in its amplitude, its limits when it chases injustice, is the sky itself". Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vest a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in the case of Union of India v. Karnail Singh : (1995) 2 SCC 728, it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as Under Article 141 of the Constitution.

11. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice oriented approach as against the strict rigors of the law. The directions issued by the court can normally be

categorized into one, in the nature of moulding of relief and the other, as the declaration of law. 'Declaration of Law' as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the Highest Court of the land. This Court in the case of Indian Bank v. ABS Marine Products (P) Ltd.: 2006 5 SCC 72, Ram Pravesh Singh v. State of Bihar: (2006) 8 SCC 381 and in State of U.P. v. Neeraj Awasthi : (2006) 1 SCC 667, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued Under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court Under Article 141 of the Constitution of India. The Court have compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of powers Under Article 142 of the Constitution as against the law declared. The directions of the Court Under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.

12. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.”

10. Insofar as *Chandi Prasad Uniyal and ors vs. State of Uttarakhand (supra)*, is concerned, the Supreme Court was concerned with the question whether overpayment of amount, due to wrong fixation of 5th and 6th pay-scales of Teachers/Principal based on the 5th Pay Commission Report, could be recovered from the recipients, who were serving as Teachers. The High Court rejected the petition filed by the appellants before the Supreme Court. The Supreme Court in paras 12 to 18 has held as under:-

“12. We may in this respect refer to the judgment of two-Judge Bench of this Court in Col. B.J. Akkara (retd.) case (supra) where this Court after referring to Shyam Babu Verma case, Sahib Ram case (supra) and few other decisions held as follows:

Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the

facts and circumstances of any particular case refuse to grant such relief against recovery.

*13. Later, a three-Judge Bench in **Syed Abdul Qadir case** (supra) after referring to **Shyam Babu Verma, Col. B.J. Akkara (retd.)** etc. restrained the department from recovery of excess amount paid, but held as follows:*

Undoubtedly, the excess amount that has been paid to the Appellants -teachers was not because of any misrepresentation or fraud on their part and the Appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the Appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the Appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the Appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the Appellants-teachers should be made.(Emphasis added)

*14. We may point out that in **Syed Abdul Qadir case** such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.*

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on

the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

*17. We are, therefore, of the considered view that except few instances pointed out in **Syed Abdul Qadir case** (supra) and in **Col. B.J. Akkara (retd.) case**(supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.*

18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the Appellants were working would be responsible for

recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the Appellant's salary in twelve equal monthly installments starting from October 2012. The appeal stands dismissed with no order as to costs. IA Nos. 2 and 3 are disposed of."

11. In ***Sant Longowal Institute of Engineering and Tech. and anr (supra)***, the Supreme Court was concerned with an Appeal where the appellant Institute had taken action to make recovery of an amount of Rs.12,32,126/- paid to the respondent towards salary and other allowances for pursuing the studies at I.I.T., Kanpur and on failure to produce the certificate of obtaining the Ph.D for which study leave was granted. The respondent applied for study leave for pursuing his Ph.D at I.I.T., Kanpur. The Competent Authority accedes to that request and granted three years study leave commencing from July 24, 1999 to July 24, 2002. The respondent, after executing necessary Bond, proceeded on leave on July 24, 1999 and three years period was completed on July 24, 2002. Due to various reasons, the respondent could not complete his Ph.D studies and he joined back in service as Lecturer in the Institute in November 2003. The respondent was asked to produce the completion certificate of the Ph.D course, which respondent could not produce, hence the appellate Institute demanded the refund of the amount, paid to

him during the period of study for pursuing Ph.D as per the terms and conditions of the Bond executed by the respondent. It was noted by the Supreme Court that there was no clear cut provision in the Bond either expressly referring to Rule 63 of the Central Civil Services (Leave) Rules, 1972 or strictly imposing a condition that if a candidate fails to complete a course of study during the period of sanctioned leave, he will have to refund to the appellant Institute, the total amount of leave salary and other benefits availed of, by him during the period of study leave. It was subsequently, a stipulation was incorporated in the Bond for making recovery, if the candidate fails to complete the course of study. From the above, it is clear, the Rule position was not incorporated in the Bond. The Supreme Court noted that such an issue was not raised by the appellant before the High Court. The Supreme Court in paras 15,16 & 17 has held as under:-

“15. The above mentioned provision has a laudable object to achieve. A Government servant or person like the Respondent is given study leave with salary and allowances etc. So as to enable him to complete the course of study and to furnish the certificate of his successful completion, so that the institute which has sanctioned the study leave would achieve the purpose and object for granting such study leave. The purpose of granting study leave with salary and other benefits is for the interest of the Institution and also the person concerned so that once he comes back and joins the institute the students will be benefited by the knowledge

and expertise acquired by the person at the expense of the institute. A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute. In other words, such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in public interest. Public money cannot be spent unless there is mutual benefit. Further, if the period of study leave was not extended or no decision was taken on his representation, he could have raised his grievances at the appropriate forum.

16. We notice that the Appellant-institute has already recovered an amount of Rs. 6.5 lacs as monthly installments from the salary of the Respondent and the Appellant-institute has also recovered an amount of Rs. 1,75,000/- from the salary of the Respondent and Rs. 4,75,000/- from the arrears of revised scales admissible to the Respondent with effect from 01.01.2006 and as such approximately Rs. 6,50,000/- has been recovered from the Respondent. Now the Appellant-institute claims balance amount of Rs. 6,18,000/-.

17. Considering the facts and circumstances of the case and considering the fact that the bond executed by the Respondent is found to be vague, we find no reason for the Appellant-institute to recover the balance amount of Rs. 6,18,000/- from the Respondent but the amount already recovered be not refunded, since public interest has definitely suffered due to non-obtaining of Ph.D by the Respondent after availing of the entire salary and other benefits. We do so taking into consideration all aspects of the matter and to do complete justice between the parties.”

12. Insofar as the judgment in ***Sant Longowal Institute of Engineering and Tech. and anr (supra)***, on which reliance was placed

by Mr. Rupal on the laudable objective of the stipulation, cannot be disputed. It is noted that the Supreme Court in para 17, noting that the Bond executed by the respondent was vague, had held that the appellant Institute had no reason to effect the recovery of the balance amount. In the case in hand, there is a stipulation in the Study Leave Agreement. Such a stipulation was not in existence in the Rules at the relevant time. The petitioner having agreed to such a stipulation, surely is bound by the same. The Rules, at the relevant point of time did not expressly provide, that in such an eventuality, the study leave is not recoverable. The respondent No.2 College was within its right to invoke the Study Leave Agreement, but not after almost 22 years, after the petitioner had joined the College on the expiry of the study leave, in view of the judgment of the Supreme Court in the case of *State of Punjab vs. Rafiq Masih* (judgment No.2), wherein the Supreme Court has culled out the situations wherein recovery is held to be impermissible and the same would be harsh. Upholding the stipulation in the Study Leave Agreement dated October 26, 1987 for recovering all the sums spent by the College if the Teacher is unable to complete the study during the period of study leave, I hold that the recovery at this point of time is covered by situation Nos.(iii) *“Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is*

*issued” and (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”, (in the case of **State of Punjab vs. Rafiq Masih (judgment No.2))***

13. I accordingly restrain the respondent No.2 College from deducting the amount of salary paid to the petitioner during the study leave period between October 26, 1987 to October 26, 1990. The writ petition is allowed to the aforesaid extent. No costs.

CM No. 430/2015

14. In view of the order passed in the writ petition, the present application is dismissed as infructuous.

**(V.KAMESWAR RAO)
JUDGE**

DECEMBER 07, 2015