

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

+ **LETTERS PATENT APPEAL No. 374/2015**

% **Reserved on:** 28th September, 2016
Date of Decision: 7th December, 2016

JAGDISH PARSAD AND OTHERSAppellant
Through Mr. Mukul Talwar, Sr. Advocate with Mr.
Shekhar Kumar & Mr. Nitin Sharma, Advocates.

Versus

UNIVERSITY OF DELHI & OTHERSRespondents
Through Mr. Sourabh Banerjee, Advocate for
respondent No. 1.
Mr. Ruchir Mishra & Mr. Mukesh Kumar Tiwari,
Advocates for UOI.
Mr. Apoorv Kurup & Mr. V.C. Shukla, Advocates for
UGC.

LETTERS PATENT APPEAL No. 539/2015

YOGESH SOBTI AND ANOTHERAppellant
Through Nemo.

Versus

UNIVERSITY OF DELHI & OTHERSRespondents
Through Mr. Sourabh Banerjee, Advocate for
respondent No. 1.
Mr. Apoorv Kurup & Mr. V.C. Shukla, Advocats for
UGC.
Mr. Anurag Mathur, Advocate for respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J.

This common decision would dispose of the aforementioned Letters
Patent Appeals arising out of the judgment dated 15th April, 2015 in Writ

Petition (C) No. 3583/2007, *Jagdish Prasad and Others versus University*

LPA No. 374/2015+ connected appeal

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of Delhi and Others and the order 27th April, 2015 in Writ Petition (C) No. 3147/2007, *K.K. Verma and Others versus University of Delhi and Others*. The latter decision follows the earlier judgment. The aforesaid writ petitions had earlier been decided in terms of judgment of the Single Judge dated 21st October, 2013, but were remanded for a fresh decision vide orders dated 21st May, 2014 in LPA No. 973/2013 titled *Jagdish Prasad and Others* and 12th February, 2015 in LPA No. 712/2014 titled *K.K. Verma and Others*. For the sake of convenience, we would like to reproduce the observations made by the Division Bench in their judgment dated 21st May, 2014 in LPA No. 973/2013, the relevant portion of which reads as under:-

“8. We find that the assumption by the learned Single Judge that to those employees to whom accommodation had been provided by the colleges, House Rent allowance would not be payable is ignoring the fact that the Writ Petitions were not filed on the premise that if the employer has been in the past, making payments erroneously, the recoveries cannot be made. The writ petitions were premised inter-alia on the ground that the so called license deeds were actually rent agreements. That the term of allotment required the allottee to maintain the premises and thus on the terms of the grant it could not be held that HRA would not be liable to be paid. It was further the case that House Rent Allowance Rules pertaining to civil servants are not applicable to the employees of various colleges established, constituent or affiliated to the University of Delhi.

9. These aspects of the matter have not been dealt with by the learned Single Judge.

10. Accordingly, LPA No.964, LPA No.973/2013 and LPA No.82/2014 are allowed. The impugned decision dated October 21, 2013 in so far W.P.(C) No.3657/2007 and W.P.(C) No.3583/2007 had been had been dismissed is set aside. The Writ Petitions are restored for adjudication on merits afresh. To be listed for directions before the learned Single Judge on July 22, 2014.

11. At this stage, we would also note that the learned Single Judge has not minutely looked into the facts while applying the law declared by the Supreme Court in Chandi Prasad Uniyal's case (supra). Two decisions passed by the two Division Benches of this Court which have clarified on the law declared in Chandi Prasad Uniyal's case have not been gone into. The two decisions are W.P.(C) No.5825/2012 J.D.Tiwari vs. CPFC dated October 29, 2013 and the decision reported as 203(2013) DLT 514 (DB) Union of India vs. J.S.sharma.

12. If the learned Single Judge were to hold against the writ petitioners on their non entitlement to receive HRA, with respect to past payments made, the issue would be decided even in view of the law declared in Chandi prasad Uniyal's case (supra) by the Supreme court as expounded by two Division Benches of this Court.

13. As regards the writ petitions above noted, they shall be listed for directions before the learned Single Judge on July 22, 2014, a date on which we are informed other writ petitions are also coming up for hearing before the learned Single Judge.”

2. The Single Judge while deciding the matter had made some observations on the question of remand, on which we have reservations. Once an order of remand was passed, the writ petitions/ proceedings had to be dealt with afresh. A party aggrieved by the order of remand, had the option to either prefer a review application or approach the Supreme Court

by way of Special Leave Petition. The impugned judgment has appropriately examined and decided the issue on merits without being influenced by the earlier judgments, deciding the writ petitions.

3. The appellants in Letters Patent Appeal No. 374/2015 are non-teaching employees of Indraprastha College. They have been allotted staff quarters consisting of one room and kitchen with a joint lavatory. The quarters have a water tap. These quarters were constructed about eighty years back and are very old. These quarters were not built with the financial assistance of the University Grants Commission (UGC) or the Government funds. The appellants claim that they had maintained and undertaken repairs, as well as paid for upkeep of the quarters, which were dilapidated. It is submitted that the entire cost have been borne by the appellants.

4. The appellants in LPA No. 539/2015 are non-teaching employees of the Hindu College. These appellants are in occupation of two or three room set accommodation within the college. The said accommodation/quarters were constructed in early 1950s, and being old and not maintained, are in a bad shape. The quarters were not constructed out of the funds or assistance of the UGC or the Government. The college and the PWD have not maintained and the entire cost of repairs and upkeep has

been borne by the appellants. The appellants, it is asserted, have spent approximately 30,000/- to Rs.80,000/- on maintenance, repairs etc.

5. The issue raised in the present appeals *per se* does not pertain to the expenditure on upkeep and maintenance of the quarters, but relates to grant and entitlement to House Rent Allowance (HRA), even when the appellants were in occupation of the staff quarters, i.e. the accommodation provided by the employer.

6. The appellants herein had filed the aforesaid writ petitions for quashing and setting aside the order dated 9th April, 2007 passed by the UGC directing University of Delhi not to pay HRA to the appellants. The appellants have also prayed for the refund of the amount that has been spent on the renovation and maintenance of the quarters, and that the college authorities etc. be directed to maintain the quarters as is done in the case of other Government accommodation.

7. The colleges affiliated to the University of Delhi fall into three categories; those established by the University of Delhi, the Government of Delhi, and those established by the public, i.e. through private participation. The latter colleges are "administered" by the society of the college. The colleges, wherein there is public participation, receive 95% grants from the UGC and other colleges established by the University

receive 100% maintenance and capital requirement grants from the UGC. Thus, for the payment of HRA to the employees, the source of funds are the grants and financial aid received from the UGC.

8. We begin by first referring to the circular dated 26th April, 1972. The UGC had appointed a committee to examine the question of fixation of rent and payment of HRA to the allottees of staff quarters of the colleges affiliated to the Delhi University. Noticing that there were two types of staff quarters; one which were built with the partial or full assistance of the UGC and the other, which were constructed from the endowment fund of the trust/society, the committee had recommended that the employees occupying staff quarters built with the assistance partial or full from the UGC would pay 10% of the salary or standard rent, whichever was less for the said quarters. The said employees would not be entitled to HRA. The income accrued on account of rent, licence fee, etc. after meeting the expenditure on repairs, taxes etc., would not be utilized for meeting the deficit of the college and would be used for improvement and expansion of facilities. Where the quarters were constructed with funds of the trust/society, the standard (maximum rent) would be fixed after taking into account return on the endowment fund so invested. The rent so fixed would be treated as approved rent for determination of HRA as payable under the Rules from time to time. The committee had also referred to a

third category of houses, which were constructed out of loans. We are not concerned with the said category in the present appeals. Consequent to the said recommendations, the UGC by their letter dated 26th April, 1972 had circulated the guidelines regarding payment of HRA to employees residing in staff quarters of the Delhi colleges.

9. The issue of payment of HRA to employees, residing in staff quarters, was analysed and criticised by the Internal Audit Cell in their report for the year 2000-2001. The Internal Audit Cell, referring to the circular/letter dated 26th April, 1972, had observed that HRA should not be paid to employees occupying accommodation constructed out of the UGC fund and standard rent should be fixed in accordance with the formula. Commenting on the letter dated 26th April, 1972 with regard to an accommodation constructed out of endowment fund, the Internal Audit Cell felt that the instructions of the UGC to pay HRA to employees occupying accommodation constructed out of endowment fund or the trust funds was wrong. The management of the colleges was responsible for looking after the welfare of the employees and once accommodation had been allotted to the employees regardless of the source of the funds, they should not be paid HRA. The Internal Audit Cell had opined that the rent fixed by the college for accommodation was not commercial rent or the market rent. HRA should not be given to any employee of the college in

occupation of the college accommodation on the ground that HRA was identically not given to Government employees, or employees who were provided accommodation by autonomous or semi-government organisations, unless accommodation was provided on commercial lines. As per instructions of the Government of India, HRA was to be granted to an employee, subject to fulfilment of certain conditions, one of which was that the Government employee should be residing in private rental accommodation and not government accommodation. It was recommended that the circular dated 26th April, 1972 should be withdrawn and undone with immediate effect. Colleges should be asked to stop payment of HRA to such employees and recoveries of the payment already made should be effected.

10. Consequent to the observations of the Internal Audit Cell, the UGC by their letter dated 8th March, 2001 informed the Principals of Delhi colleges that even in cases where the accommodation provided by the college was constructed out of the funds of the trust etc., the same would be treated as official accommodation for the purpose of payment/withdrawal of HRA. It was further directed that the payment of HRA to such employees in occupation of staff quarters was illegal and the amount already paid should be recovered from 8th April, 1998. The date 8th April, 1998 was fixed keeping in view the office order dated 2nd December,

1998 by which the colleges were also asked to provide information and report the amount recovered from the allottees name-wise with designation with effect from the said date.

11. This was followed by letters dated 21st January, 2002 and 27th March, 2002 written to some Delhi colleges to discontinue payment of HRA to the allottees of staff quarters constructed out of trust or endowment fund. In response thereto, the UGC was informed that some of the colleges had stopped making payment of HRA to employees who had been allotted staff quarters and process of recovery had been initiated. Some other colleges had stated that they were not paying HRA to allottees of staff quarters. However, some colleges had taken the stand that the stipulations and conditions imposed were not applicable to them as the quarters had been constructed by the college foundation fund/endowment fund and were not the UGC or Government accommodation. Certain other colleges had taken the stand that they were utilising the rental or licence fee received to meet 5% management share towards maintenance of the college.

12. The UGC, by the letter dated 18th July, 2006, had solicited information from the society/trust colleges to state as to whether they were paying HRA to the allottees of staff quarters. The society/trust colleges were required to inform them as to whether they were paying HRA to the allottees of staff quarters.

13. Thereafter, there was an exchange of correspondence between the Joint Secretary, Human Resource Development, Government of India and the Secretary, UGC on the question of grant of HRA to allottees of staff quarters in the Delhi University. The Ministry of Human Resource Development by their letter dated 2nd January, 2007 had directed the UGC to confirm that no employee in occupation of accommodation allotted by the colleges was being paid HRA. The UGC in turn, by their letter dated 9th April, 2007, had written to the Principals of all society/trust managed colleges to stop paying HRA to allottees of staff quarters.

14. The short and core issue is whether the appellants who are in occupation of staff quarters are entitled to payment of HRA. The University of Delhi has supported the stand of the UGC and has been critical of the society/trust colleges, who had continued or were continuing to pay HRA to the allottees of staff quarters observing that this was contrary to the of the Fundamental Rules and Supplementary Rules of the Government of India, (FRSR, for short). The society/trust colleges, which stand admitted to the privileges of the University, must abide by the provisions of the Statute 30 (1) of the Statutes of University and Ordinance XVIII of the Ordinance of University under the Delhi University Act. These provisions mandate that the colleges are to be administered by societies registered under the Societies Registration Act, 1860. It is,

therefore, wrong to state that the staff quarters belong to a third person, i.e. the society/trust. The staff quarters are properties of the college society and in some cases the society/trust has executed lease deeds in favour of the Universities assigning their rights in the University's favour. Further, the land on which the colleges have been constructed was in most cases allotted by the Land and Development Office, Ministry of Urban Development on the recommendation of the University of Delhi. The claim made by some colleges that the land and the buildings constructed thereon belong to the trust was incorrect. As per general principles governing the conditions of grants by the Government of India, the same are to be given to a person or public body having a distinct legal entity. All societies running colleges are given substantial grant by the Government of India through the UGC under the provisions of General Financial Rules. The Ministry of Human Resource and Development vide their letter dated 27th July, 1998 had extended the benefit of the Fifty Pay Commission recommendations to the teachers of Delhi University. In terms of the said letter, HRA cannot be paid to an employee who was/is in occupation of Government accommodation, and this stipulation was/is also applicable to autonomous and semi government bodies. Since the colleges were receiving either 100% or 95% grants-in-aid, they were/are at par with

autonomous organisation and the same rule would accordingly apply to them.

15. We find considerable merit and substance in the said submissions made by the respondents, the UGC and the University of Delhi, especially in light of the letter dated 27th July, 1998 of the Ministry of Human Resource Development, Department of Education, Government of India. The Central Government, by the said letter had agreed to revise the pay scales of teachers in Central Universities and colleges, and had also decided to continue providing financial assistance. However, the grant of financial aid was subject to the condition that the entire scheme of revision of pay scales together with all conditions as laid down in that regard was implemented without any modifications by way of regulations by the UGC. All universities and Management colleges were required to make necessary changes in the statute ordinance, rules, regulations, etc. As far as entitlement to HRA, etc. was concerned, the terms had highlighted that the teachers of the central universities would be entitled to the same and paid the allowances at the rates and dates as applicable to the Central Government employees. Thus, the terms and conditions relating to eligibility for HRA in the case of Central Government employees was made applicable to employees of the Delhi University, who had got official accommodation.

16. Grant of Compensatory (City) Allowance and HRA to the Central Government employees was originally governed by the Office Memorandum dated 27th November, 1965. As per the said Memorandum cities were classified as 'A', 'B-1', 'B-2' and 'C'. In case of 'A', city compensatory allowance was payable @ 10% of the pay, subject to minimum and maximum quantified figure. In case of free boarding or lodging or messing 50% of the allowance was payable. HRA i.e. House Rent Allowance in case of 'A' and 'B-1' when pay was more than Rs.3000/- was restricted to 10% of the pay. The 'rent' it was specified to mean, charges payable by the Government servant as consideration for unfurnished accommodation being equal to the gross rental value of the house as assessed for the Municipal purposes or otherwise, without deduction of the rebate of 10% on account of repairs, as applicable to an owner and would include municipal and other taxes, except service Tax. In case of furnished accommodation, adjustment as stipulated was to be made. The aforesaid Memorandum dated 27th November, 1965 was amended from time to time.

17. However, the 5th Pay Commission had the effect of substantially modifying the computation city compensatory allowance and HRA. The Government of India, Ministry of Finance, thereupon issued an office Memorandum dated 3rd October, 1997. The memorandum has provided for

payment of city compensatory allowance, as per the monthly amount specified therein dependent upon the salary and class of the city. The cities were classified as 'A-1', 'A', 'B-1', 'B-2', and 'C'. In 'A-1' cities, HRA was payable @ 30% of the actual basic pay; in case of 'A', 'B-1' and 'B-2' cities HRA was payable @ 15% of the actual basic pay; in case of 'C' class cities HRA was payable @ 7.5% of the actual basic pay; and in case of unclassified cities HRA was payable @ 5% of the actual basic pay. These orders were effected from 1st August, 1997 and were equally applicable to civilian employees of the defence services. Thus, payment of the HRA underwent a complete change, with substantial upward revision in case of A-1 cities.

18. It is an accepted and admitted position that Central Government employees, who have been allotted official or government accommodation, are not entitled to HRA. FRSR Part-V relating to HRA states that the grant of HRA or entitlement to the same is subject to certain conditions. One of the stipulations is that the Government servant should be eligible for allotment of Government accommodation and should have applied for such accommodation in accordance with the prescribed procedure, and should not have been provided the accommodation. Consequently, the essential requirements for grant of HRA, post the implementation of the recommendation of the 5th Pay Commission is that the Government servant

should not be in occupation of or residing in a Government accommodation. HRA is not payable if an employee is residing in an accommodation allotted to his parents/son/daughter by the Central Government, State Government and Autonomous Public Sector Undertakings or Semi-Governmental organisations. Thus, HRA is not admissible to those who occupy the accommodation provided by the Government and those to whom accommodation has been offered by the Government, but has been refused.

19. This brings us to the sole contention raised to meet the aforesaid mandate. The argument of the appellants is that the accommodation allotted to them was not constructed out of the UGC funds but from the endowment fund of the trust and, therefore, the aforesaid negative stipulations incorporated in the FRSR would not be applicable. We do not find any merit in the said argument. The UGC transfers and provides the funds to the University of Delhi and in turn to the respective colleges, i.e. the societies which “administer” the college. It is the societies who are the employers. While computing the said grant, the UGC has to factor in the wages and salaries to be paid to the teachers and other staff of the colleges, in terms of the policies and decisions. The funding/grant has to accord and account for the salaries and applied universally, and the same is

not under challenge. We have already referred to the affidavit and the stand of the University of Delhi and also the letter granting the pay scales to the teachers etc. as per the 5th Pay Commission Report.

20. The appellants have been given the accommodation owing to their employment in the colleges affiliated with the University. They have not entered into lease deed with “third” parties. The Society and the Trust may be separate juristic entities, but if we examine the question from a practical and rational point of view, it would be incongruous and wrong to treat the society and trust as two separate institutions for the issue in question. There is a direct nexus between the employment and allotment of accommodation, and also between the Society / Management Committee and the Trust. The trusts and societies are connected by an umbilical cord and are, in substance, inseparable. Pertinently, the Society and the Colleges are dependent upon the UGC for funding to the extent of 95% or 100%. For entitlement of grant of funds, the societies and the University of Delhi must abide by the rules and regulations applicable and prescribed by the UGC. The UGC while granting funds and making payment towards HRA payable to the employees/ teachers, is entitled to state that HRA would not be paid to those in occupation of accommodation belonging to the society or even the trust. The UGC is entitled to put conditions to ensure that HRA is being rightly paid to the employees/ teachers of the colleges for they

fund the salary and allowances to the extent of 95% or 100%. The college must ask for approval if any payment is made *de hors* to the stipulations. The funds and grants are public funds and must be used in terms of the grant and conditions imposed. The conditions and stipulation imposed regarding payment of HRA are at par and identical to the stipulations applicable to the Central, State and Public Sector employees.

21. We also find no fault or illegality in the UGC insisting that payment of HRA would be restricted to the teachers or the employees who meet the conditions as applicable under the Central Government rules and regulations. In other words, the UGC intends and wants the colleges to adhere to the same rules and regulations as are applicable to Central Government employees, who are entitled to grant of HRA. There is nothing irrational or wrong with the said stipulation, which are reasonable.

22. The argument of the appellants and Hindu College is premised on the erroneous assumption that the Central Government employees or Public Sector employees are allotted accommodation/quarters owned by the Government or undertaking, whereas the staff quarters attached to the college are allotted for the convenience of the college staff to ensure the efficient utilisation of the services to the benefit of the students. The said argument, in our opinion, is fallacious and farfetched. If the said plea is accepted, it would require reworking and amendment of the rules

governing grant of HRA, especially in the cases where accommodation is provided by autonomous or Government bodies within the township or the complex. In the present case, we are not dealing with employees who are provided accommodation within the college complex because the nature of work is such that they are supposed to be available 24 hours at beck and call and as when need arises. These are not cases where the duties of the employees require them to reside and live within the college complex itself.

23. In the remand order passed by the Division Bench in LPA No. 973/2013 dated 21st May, 2014, the Division Bench had directed the Single Judge to examine whether the licence deeds were annual rent agreements, i.e., the employees were being asked to pay lease or licence amounts at the actual market rent. As noticed above, one of the contentions raised by the appellants is that unlike the Central Government accommodation, the amount fixed as licence fee by the colleges was much higher. Secondly, the allottees were maintaining the houses at their own expense, whereas in case of accommodation provided by the Central Government, maintenance, upkeep and repair charges etc. are borne and paid by the Central Government. These are facts specific to situations which have to be examined in each and every case. The licence fee as fixed will have to be examined to ascertain and find out whether the amount charged was actual

market rent or much lower than the market rent and in terms of the guidelines and stipulations fixed by the Central Government. These questions cannot be decided on the basis of generalities or vague assertions. The factual situation has to be examined and correct facts have to be pleaded. We have already referred to the letter dated 26th April, 1972 and the OMs dated 27th November, 1965 and 5th October, 1997. These are aspects that may have to be taken into consideration while examining the question of recovery of arrears.

24. When the writ petitions had come up for hearing before the Single Judge, interim orders were passed after hearing counsel for the parties directing that the HRA being a substantial benefit given to the employees, should not be denied. In view of the aforesaid interim order, operation of the order dated 9th April, 2007 by which the appellants were denied payment of HRA was stayed. The effect thereof has been that the appellants had continued to receive HRA during pendency of the present writ petitions till their dismissal.

25. Section 144 of the Code of Civil Procedure gives statutory recognition to the doctrine of restitution. The rule of restitution is prophetic with justice, equity and fairplay. The courts have inherent right of restitution to do complete justice between the parties and place them in the same position which they would have occupied, but for a wrong

order/judgment of a court which is modified or reversed. If we apply doctrine of restitution, the appellants should be directed and compelled to refund the excess payment received. Indeed, it can be argued that when a party obtains the stay order and receives payments pursuant thereto, the said party must restore and refund the payment received as a result of the wrong interim order. Once the interim order is reversed or modified by the final order, benefit taken under the wrong order cannot be retained or kept alive and the unfair gain made by one party at the cost of the other must be set aside and the balance restored (see observations of the Supreme Court in *South Eastern Coal Fields Limited versus State of M.P. and Others*, (2003) 8 SCC 648 and *Gurjeet Singh versus Nirmal Singh*, (2000) 8 SCC 5519).

26. However, in the present case, reference must be made to decision of the Supreme Court in the case of *State of Punjab versus Rafiq Masih*, (2015) 4 SCC 334 wherein after extensively examining the case law on the subject, it has been held as under:-

“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."

This case specifically dealt with recoveries from employees in service or retired Government employees.

27. The impugned judgment, in paragraphs 14 and 15 has referred to the letter of the UGC 8th March, 2001 and it is opined that recovery of payments already made would be justified and correct in terms of the ratio in *Rafiq Masih* (supra) in view of the specific and categorical directions in the letter of the UGC dated 8th March, 2001 as per which it was no longer open to the colleges, including respondent No. 4, to continue paying HRA to the employees. It has been held that the relief against recovery is not granted as a right, but in equity and exercising judicial discretion to relieve the employee of their hardship which would be caused in case recovery is

directed. The recoveries relate to the period less than five years and, therefore, paragraph 12 of the judgment in **Rafiq Masih** (supra) would not be applicable and paragraph 11 would apply. For the sake of convenience, we would like to quote paragraphs 11 and 12 in the case of **Rafiq Masih** (supra) which read as under:-

“11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to the employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

12. Reference may first of all be made to the decision in *Syed Abdul Qadir v. State of Bihar* [*Syed Abdul Qadir v. State of Bihar*, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] , wherein this Court recorded the following observation in para 58: (SCC p. 491)

“58. *The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered.* But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, *or in cases where the error is detected or corrected within a short time of wrong payment*, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana* [*Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , *Shyam Babu Verma v. Union of India* [*Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , *Union of India v. M. Bhaskar* [(1996) 4 SCC

416 : 1996 SCC (L&S) 967] , V. *Gangaram v. Director* [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652] , *B.J. Akkara v. Govt. of India* [*B.J. Akkara v. Govt. of India*, (2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] , *Purshottam Lal Das v. State of Bihar* [(2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508] , *Punjab National Bank v. Manjeet Singh* [(2006) 8 SCC 647 : (2007) 1 SCC (L&S) 16] and *Bihar SEB v. Bijay Bhadur* [(2000) 10 SCC 99 : 2000 SCC (L&S) 394] .”

A reading of the decision in the case of ***Rafiq Masih*** (supra) would show that paragraphs 11 and 12 refer to certain situations wherein the Supreme Court had not permitted recovery of arrears. It would be incorrect to read paragraph 12 as being subject to paragraph 11. Paragraph 18 is the condensation of the principles culled out. This is the *ratio decidendi*. This is the reason in clause (iii) of paragraph 18 it is recorded that recovery may be denied as impermissible when recovery is sought from employees where excess payment has been made for a period of five years before the order of recovery is issued. Paragraph (iii), therefore, incorporates the principles as found on the basis of the ratio of judgments mentioned in the decision. It would be incorrect to read paragraph 12 as subservient paragraph 11.

28. When deciding the question of recovery of payments, regard must be had to the fact that all cases where HRA has been paid would not fall in a straitjacket. A universal or broad-brush approach cannot be applied, for the

facts of each case or employee have to be considered. The appellants in

the present case are class IV employees, several of whom have already retired. Our attention has also been drawn to a number of cases pending before the Single Judge, where the factual situation it is pleaded is different. Benefit of the interim order was granted even to those who had not approached the courts. In view of the aforesaid, it would be appropriate for the UGC to appoint a Committee in consultation with the University of Delhi to examine the question of recovery of arrears post 8th March, 2001 in each case, keeping in mind the parameters and ratio expounded in **Rafiq Masih** (supra) and all other aspects mentioned above. The decision of the committee, we hope and trust, would be accepted by the appellant and other employees. Of course, the appellants and the employees can challenge the said decision and in case they do not succeed, the Court can pass appropriate orders, including payment of interest in addition to refund. We have not asked the University of Delhi to set up the said Committee owing to the conflict of interest which may arise and lead to pressure on the Committee if appointed by the University, thus hindering or preventing an objective and fair decision.

29. We have also noted the contentions raised by the appellants that they were being asked to pay market rent for the accommodation allotted to them and not the standard rent payable in terms of the regulations and rules of the Central Government applicable to the Government employees. We

have expressed our reservations as to the correctness and truth of the said assertion, but have left it open. The contention may be raised before the committee along with evidence. The appellants, however, have specifically pleaded that they have paid for repairs, upkeep, and maintenance of the accommodation, whereas in the case of Central Government the said expenditure is incurred by the Central Government and not paid by the employees. The contention of the appellants that owing to the dilapidated state of the accommodation allotted to them they would be entitled to HRA, in our opinion, would be a dangerous proposition to accept and apply as the same would have very serious consequences in other cases. The level of maintenance and condition of the houses allotted may vary from location to location, organisation to organisation and State to State. If this stipulation were to be a pre-condition for determining whether or not an employee would be entitled to HRA, insurmountable difficulties, and problems, in addition to multiplicity of litigation, are bound to arise. The submission must be rejected.

30. By the aforesaid, we do not mean that the college authorities should not meet the cost of repairs and maintenance, or that the UGC should not provide for and include maintenance costs when deliberating the quantum of financial grant/funds to be given. Though we are in agreement that the appellants and the colleges should undertake or provide for the

maintenance and upkeep of the accommodation as per the applicable policy, the entitlement to HRA cannot be made subject to the satisfaction of fulfilment of the condition that the official accommodation as provided must be of a particular standard.

31. A necessary corollary to the above discussion would mandate and require the UGC to fund and pay for the up-keep and maintenance charges including capital costs incurred on the residential accommodation. Obviously, the aforesaid funding or payment have to be in accordance with the policy/guidelines in force. It may be appropriate for the University of Delhi and colleges to take up the issue with the UGC to ensure that funds as per the rules or policy are provided and are not denied.

32. Before we conclude, we must record that the trust/society colleges in the aforesaid situation may have to modify the terms and conditions of allotment of quarters, including the licence fee payable, the repair and maintenance charges, etc. The terms and conditions should be reviewed and the said exercise should be undertaken if this would ensure parity of license/rent paid by the Central Government employees, who are denied HRA on account of the fact that they are in occupation of Government accommodation. While fixing the licence fee, rentals, etc., the college authorities may also take into account the varying nature and type of the accommodation provided. These are issues and matters of larger concern

and should be taken up by the University of Delhi and the respective societies/trust. However, as far as payment of HRA is concerned, the same must abide by the terms and conditions as applicable to the Central Government employees.

33. With the aforesaid observations and directions, the appeals are disposed of upholding the judgment of the Single Judge that the appellants are not entitled to HRA. However, direction with regard to the payment of arrears with effect from 8th March 2001 is modified. We have asked the UGC to set up a committee to go into different aspects, as pleaded and also apply the ratio in *Rafiq Masih* (supra). Recoveries would be made by the University of Delhi from specific employees in terms of the report of the said committee (see paragraph 28 above). In the facts of the case, there would be no order as to costs.

(SANJIV KHANNA)
JUDGE

(SUNITA GUPTA)
JUDGE

DECEMBER 7th, 2016
VKR