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

+ W.P.(C) 1531/2016

RAM SINGH RANA

..... Petitioner

Through: Mr. Bajrang Vats and Ms. Geeta
Ujjwal, Adv.

versus

UNIVERSITY OF DELHI & ANR.

..... Respondents

Through: Mr. Amit Bansal and Ms. Seema
Dolo, Adv. for R1.
Mr. Mohinder J.S. Rupal and Mr.
Prang Newmai, Adv. for R2.

AND

+ (28) W.P.(C) 1612/2016

MAHENDER SINGH

..... Petitioner

Through: Mr. Bajrang Vats and Ms. Geeta
Ujjwal, Adv.

versus

UNIVERSITY OF DELHI THROUGH: ITS
REGISTRAR

..... Respondent

Through: Mr. Arun Bhardwaj, Adv.

AND

+ (29) W.P.(C) 1949/2016

RAGHUBIR SINGH

..... Petitioner

Through: Mr. Bajrang Vats and Ms. Geeta
Ujjwal, Adv.

versus

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the physical file and no page is missing.

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UNIVERSITY OF DELHI THROUGH: ITS REGISTRAR
& ORS

..... Respondents

Through: Mr. Amit Bansal and Ms. Seema
Dolo, Advs. for R1.
Mr. Mohinder J.S. Rupal and Mr.
Prang Newmai, Advs. for R2.

+ (30) W.P.(C) 2019/2016
GYAN SINGH RANA

..... Petitioner

Through: Mr. Bajrang Vats and Ms. Geeta
Ujjwal, Advs.

versus

UNIVERSITY OF DELHI & ANR

..... Respondents

Through: Mr. Amit Bansal and Ms. Seema
Dolo, Advs. for R1.
Mr. Mohinder J.S. Rupal and Mr.
Prang Newmai, Advs. for R2.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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25.07.2017

1. As a common issue arises for consideration in these petitions, they are being disposed of by this order. The facts of each case shall be referred to separately.

W.P.(C) 1531/2016

2. The petitioner joined the respondent No.2 University as a driver on 22nd July, 1978 in the pay scale of Rs. 260 – 400/-. He got the pay scale of

Rs. 1,320 – 2,040/- under One Time Upward Movement scheme w.e.f 22nd July, 1986. On 22nd July, 1998, he was given the benefit of ACP whereby he got the pay scale of Rs.5,000 – 8000/-. The pay of the petitioner was revised in the pay band of Rs.9,300 – 34,800/- with grade pay of Rs.4,200/- w.e.f 1st January, 2006. With effect from 1st September, 2008, he got the benefit of 3rd MACP in the pay band of Rs.9,300 – 34,800/- with grade pay of Rs. 4,600/-. On 14th January, 2010, he was promoted to the post of Vehicle Supervisor in the Grade Pay of Rs.4,600/-. He attained the age of superannuation on 28th February, 2014 when he was in the pay band of Rs.9,300 – 34,800/- with grade pay of Rs.4,600/-.

3. It is the case of the petitioner that vide order dated 20th February, 2014 his pay was re-fixed in the pay-scale of Rs.4,500 – 7,000/- w.e.f 7th August, 1999. That apart in terms of office order dated 20th February, 2014, his pay has been re-fixed in the Pay Band-1 of Rs.5,200 – 20,200/- with Grade Pay of Rs.2,800/- w.e.f 1st January, 2006. Accordingly, his pay in 3rd MACP has been re-fixed in the Pay Band-2 of Rs.9,300 – 34,800/- with Grade pay of Rs.4,200/- w.e.f 1st September, 2008. Similarly on promotion to the Post of Vehicle Supervisor his pay has been re-fixed in the same Pay Band-2 with same Grade pay of Rs.4,200/- instead of Rs.4,600/-. This resulted in fixation of pension at Rs.10,243/- instead of Rs.10,880/-. The aforesaid resulted in the recovery of an amount of Rs.2,34,000/- (Approx.) from the retiral benefits of the petitioner.

W.P.(C) 1612/2016

4. The petitioner herein joined the Delhi University Library System as Junior Library Attendant on 5th March, 1974. He was promoted as Sr.

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Library Attendant in July, 1977 and thereafter as Library Clerk in October, 1987. Later he was promoted as Semi-Professional Assistant in 1993. He was granted 2nd financial upgradation in the pay scale of Rs.5,500 – 9,000/- under the ACP Scheme. The petitioner was granted revised Pay Scale in the Pay Band of Rs.9,300 – 34,800 with Grade Pay of Rs.4,200/- w.e.f 1st January, 2006. He received the pay in the aforesaid Pay Band / Grade pay till 31st October, 2013, when he retired from the University. Vide the Establishment Order issued on 18/19th November, 2013, his pay was revised and re-fixed at Rs.13,160/- with Grade Pay Rs.2,800/- w.e.f 1st January, 2006 in the Pay Band of Rs.5,200 – 20,200/-. The difference of pay in view of the difference of Pay Band / Grade Pay of Rs.60,000/- (approx.) for the period 1st January, 2006 to 31st July, 2008 was recovered by the respondents from the retiral benefits of the petitioner. It is his case that he was granted 3rd MACP in the Grade Pay of Rs.4,200/- effective from 1st August, 2008, on 1st July, 2014.

W.P.(C) 1949/2016

5. The case of the petitioner is that he was appointed as Driver in the respondent no.2 / University on December, 12, 1984 in the Pay-Scale of Rs.260 – 400/-. On 7th August, 1995, the petitioner got first financial upgradation under One Time Upward Movement Scheme vide letter dated 7th August, 1995 in the Pay Scale of Rs.1,320 – 2,040 w.e.f 12th December, 1992. On 26th May, 1998, he was placed in the revised Pay Scale of Rs.4,000 – 6,000/- w.e.f 1st January, 1996. On 25th May, 2005, he got the second financial upgradation under ACP Scheme in the Pay Scale of Rs.5,000 – 8,000/- w.e.f 12th December, 2004. In 2008, the petitioner was

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placed in Pay Band-2 in the Pay Scale of Rs.9,300 – 34,800 with Grade Pay of Rs.4,200/- w.e.f 1st January, 2006. On 12th May, 2015, the pay of the petitioner was re-fixed in the Pay Scale of Rs.5,200 – 20,200/- with Grade Pay of Rs.2,800/- w.e.f 1st January, 2006, which resulted in the decision of the respondents to recover an amount of Rs.2,51,668/- and since August, 2015, Rs.15,000/- per month is being recovered from the salary of the petitioner in every subsequent month.

W.P.(C) 2019/2016

6. In this writ petition, the facts are the petitioner joined as a Driver in the respondent no.2, College on 30th May, 1990. He was placed in the Pay Scale of Rs.1,200 – 2040 under One Time Upward Movement Scheme w.e.f 25th February, 1986. On 13th November, 1996, petitioner got promotion to the post of Vehicle Supervisor. In 2011, the petitioner got the Second MACP w.e.f 1st September, 2008 in the Pay Scale of Rs.9,300 – 34, 800/- with Grade Pay of Rs.4,600/-. The petitioner retired in 2009. The respondent has also re-fixed the pay of the petitioner under the Sixth Central Pay Commission in the revised Pay-Scale of Rs.5,200 – 20,200/- with Grade pay of Rs.2,800/- w.e.f 1st January, 2006. Similarly, the pay of the petitioner under the 3rd MACP w.e.f 1st September, 2008 has been re-fixed with Grade Pay of Rs.4,200/- instead of Rs.4,600/-. That apart respondent no.1 issued order dated 29th May, 2015 recovering an amount of Rs.65,786/- from the retiral benefits of the petitioner.

7. The only submission made by the learned counsel for the petitioners is that, respondents could not have effected recovery from the retiral benefits

of the petitioners after such a long time in view of the judgment of the Supreme Court in the case of *State Bank of Punjab and Ors. v. Rafiq Masih (White Washer) and Ors. (2015) 4 SCC 334*. According to him, the case of the petitioners is covered in terms of Para 18 (i) (ii) and (iii) of the said judgment. He states, petitioners' recovery effected was either on the date of retirement or much after retirement and the amounts recovered being substantial, these are cases of hardship and recovery is iniquitous and arbitrary and the respondents are required to repay the petitioners the amount so recovered with interest.

8. On the other hand, Mr. Mohinder J.S. Rupal, learned counsel appearing for the respondents / colleges would reiterate the stand of the colleges in their counter-affidavits, that the re-fixation of the pay from time to time has been effected in view of the Officer Order No. 525 dated 14th August, 2012, which has been issued by the University of Delhi on the instructions of the UGC to review the pay fixation of the concerned employees w.e.f 1st January, 2006 wherever necessary. According to him, the petitioners do not contest the re-fixation of their pay w.e.f 1st January, 2006. He states the grievance of the petitioners that the recovery having been effected in violation of principles of natural justice and contrary to the judgment of the Supreme Court is not tenable inasmuch as when the pay fixation is not in accordance with the instructions, same can be re-fixed without any notice and excess payment can be recovered in view of the Judgment of the Supreme Court in *Chandi Prasad Uniyal v. State of Uttarakhand 2012 (8) SCC 417*. That apart, the facts in the case of *Rafiq Masih (supra)* were different from the facts as available in these petitions

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inasmuch as in all these petitions recovery has been effected unlike in **Rafiq Masih (supra)** where the parties had approached the Court at the threshold without allowing the employer to effect any recovery, hence the case of petitioners is not a case of hardship. In the alternative, it is his submission that, even it is a case of hardship, the petitioners are not entitled to any interest on the amount of the refund, if allowed by this Court. Mr. Rupal has taken me through the judgments of the Supreme Court in the cases of **Rafiq Masih (supra)** and **Chandi Prasad Uniyal (supra)**.

9. The arguments of Mr. Arun Bhardwaj, learned counsel appearing for the respondent in W.P.(C) 1612/2016 are also on similar lines as that of Mr. Rupal. That apart it is his submission that the judgment of the Supreme Court in the case of **Rafiq Masih (supra)** would have a prospective effect.

10. Having heard the learned counsel for the parties, the only question which arises for consideration is whether the respondents were justified in effecting recovery by re-fixing the pay of the petitioners w.e.f 1st January, 2006 including pension in some cases. The issue is well settled by the Supreme Court in the case of **Rafiq Masih (supra)**. Suffice to state the Supreme Court referring to its earlier judgments has held that recovery would be sustainable so long as the same is not iniquitous or arbitrary. The Supreme Court has culled out some of the situation of hardships in which cases the recovery where payments mistakenly made by the employers in excess of their entitlement were held to be iniquitous / arbitrary. In this regard, this Court is concerned with Paras 18 (i) (ii) and (iii) of **Rafiq Masih (supra)**, which I reproduce as under:

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“(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.”

11. I may like to deal with the submissions made by Mr. Rupal and Mr. Bhardwaj that the recovery having been effected, the cases are not of hardship, iniquitous and arbitrary.

12. I am unable to agree with the said submission made by the learned counsel for the respondents for the simple reason even if a recovery is not made, as in the case of **Rafiq Masih (supra)**, still the cases are iniquitous / arbitrary and of hardship, more particularly, when the earnings have dwindled and the petitioners' pension has been fixed on a lower amount. In one case the petitioner having retired in the year 2009, re-fixation has been done in the year 2015. In some cases, the amounts recovered are Rs.2,34,000/- (approx.) and Rs. 2,51,668/- (approx.), which are substantial amounts and no differentiation can be made between these cases and cases where recovery of Rs.65,786 / Rs.60,000/- was made, so long as the recovery has been made in a situation postulated by the Supreme Court to be a case of hardship. The submission of Mr. Rupal, that, in view of the Judgment of the Supreme Court in **Chandi Prasad Uniyal (supra)**, the recovery can be effected, is concerned, I may state, here, in **Chandi Prasad Uniyal (supra)**, the Supreme Court has made an exception in those cases, which are of hardship. So, it is not a judgment where the Supreme Court has

held that in every case, recovery can be effected. In fact, the Judgment of *Chandi Prasad Uniyal (supra)* was considered by the Supreme Court in *Rafiq Masih (supra)* and thereafter, culled out the situations, which are of hardship, iniquitous / arbitrary. So, this plea of Mr. Rupal needs to be rejected. In so far as the submission of Mr. Bhardwaj that, Judgment of *Rafiq Masih (supra)* would have prospective application, I am unable to agree with that submission, inasmuch as the Supreme Court has not said so. If the Supreme Court intended to make a Judgment prospective, it would have said so. The impugned orders (wherever challenged) needs to be set aside. Ordered accordingly. A direction is issued to the respondents to refund the amounts recovered from the petitioners from their retiral benefits with interest @ 6% per annum to be computed w.e.f the date of recovery till the date of payment. The directions shall be complied within 2 months from the receipt of copy of this order.

The petitions stand disposed of. No costs.


V. KAMESWAR RAO, J

JULY 25, 2017/jg