

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

Date of Decision: February 06, 2018

- (i) + **W.P.(C) 6590/2016 & C.M. 27062/2016**
(ii) + **W.P.(C) 760/2017 & C.M. 3503/2017**
(iii) + **W.P.(C) 762/2017 & C.M. 3509/2017**
(iv) + **W.P.(C) 790/2017 & C.M. 3665/2017**

P.K.BAJPAI
BOTHAS PRASAD RAO
I T N VEERARAGHAVAN
R.KRISHAN

..... Petitioners

Through: Mr. Kamal Kumar Pandey, Advocate

Versus

UOI & ANR.

..... Respondents

Through: Mr. Sarat Chandra & Mr. Brajesh
Kumar, Advocates for respondent No.1-UOI in
W.P.(C) 6590/2016

Mr. Kavindra Gill, Mr. J.C. Ranjan &
Ms. Shashi Ranjan, Advocates for respondent
No.1 in W.P.(C) 760/2017; 762/2017 &
790/2017

Mr. Satyawar Shekhawat & Mr. Saurav
Agarwal, Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. In the above captioned four petitions, the challenge is to the initial order of 1st August, 2014 (*Annexure P-5*), vide which respondent –*Bharat*

Heavy Electricals Limited (BHEL) has been called upon by Ministry of Heavy Industries and Public Enterprises, Department of Heavy Industry, Government of India, to recover the excess amount paid to petitioners in contravention of DPE Guidelines pertaining to Stagnation Increment while finalizing the fixation of pay, terms and conditions of the Board level executives in BHEL. In pursuance to the aforesaid order of 1st August, 2014 (*Annexure P-5*), Recovery Notices of 1st July, 2016 have been issued to petitioners, which are impugned in these petitions.

2. Since the challenge to the impugned Recovery Notices is on identical grounds, therefore, with the consent of learned counsel for the parties, these petitions have been heard together and are being disposed of by this common judgment.

3. It is matter of record that all the four petitioners have retired in the year 2015 and before retirement they were called upon by respondent-BHEL to execute a bond that the financial benefit granted to petitioners on account of grant of Stagnation Increments in the years 2002 to 2004 would be refunded in the event of petitioners not succeeding in their Representations against the recovery sought to be made. Petitioners Representations' stand declined in the year 2016, as grant of Stagnation Increments to petitioners was in violation of Government Rules/ DPE Guidelines.

4. Stagnation Increments were purportedly granted to petitioners as per DPE approved scales of the year 1997. The recovery of financial

benefits accruing upon grant of Stagnation Increments to petitioners is premised on Office Memorandum of 22nd July, 1998 (*Annexure R1/2*) which clearly provides that one Stagnation Increment on completion of every two years at maximum of the respective scales is to be granted. The appointment letters of petitioners clearly stipulate that their service conditions would be governed by relevant Rules and Instructions of the CPSE/ Government.

5. The challenge to the impugned Office Memorandums and Recovery Notices by learned counsel for petitioners is on the ground that Supreme Court in *State of Punjab & Ors. Vs. Rafiq Masih (white washer)& Ors.* (2015) 4 SCC 334 had debarred respondents from effecting any such recoveries, as Class III and IV employees had retired and recoveries were sought to be made from them after one year of their retirement. It is pointed out by learned counsel for petitioners that the outer limit to initiate such recoveries is five years and in the instant case, Stagnation Increments granted way back in the years 2002 to 2004 are sought to be recovered after more than one decade i.e. in the year 2016.

6. Learned counsel for petitioners submits that only petitioners have been singled out as recovery proceedings have been initiated against them, whereas Stagnation Increments granted to other similarly placed officers in consecutive years is not being recovered. It is further submitted that petitioners have been granted Stagnation Increment under the Presidential Directive of 1st December, 2000, which has not been

modified and so, no recoveries can be initiated. Lastly, it is submitted that the impugned Office Memorandums and Recovery Notices deserve to be set aside, as belated recovery now sought to be made is quite harsh, inequitable and for no fault of petitioners, they are being penalized.

7. Learned counsel for respondents submits that Recovery Notices have been issued in the light of Office Memorandum of 22nd July, 1998 (*Annexure R1/2*) and decision of Supreme Court in *Rafiq Masih (Supra)* was relating to Class III & IV employees, whereas petitioners are Board level Executives and so, ratio of decision in *Rafiq Masih (Supra)* will not apply to the case of petitioners. Counsel for respondents relies upon Supreme Court's decision in *Chandi Prasad Uniyal & Ors. Vs. State of Uttarkhand & Ors.* (2012) 8 SCC 417 to submit that any payment made without authority of law can always be recovered barring a few exceptions of extreme hardship but not as a matter of right. It is urged that in such situations, law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

8. Upon hearing and on perusal of Office Memorandum of 22nd July, 1998 (*Annexure R1/2*) and Recovery Notices, material on record and the decisions cited, I find that petitioner has been granted Stagnation Increments in blatant violation of Office Memorandum of 22nd July, 1998 (*Annexure R1/2*). Even if the later Office Memorandums are ignored, still the grant of Stagnation Increments to petitioners in consecutive years from 2002 to 2004 cannot be justified in the face of Office Memorandum

of 22nd July, 1998 (*Annexure R1/2*). It is pertinent to note that petitioners have already furnished a bond prior to their retirement that they would make good the excess payment received by them in respect of Stagnation Increments in question. Reliance placed upon Supreme Court's decision in *Rafiq Masih (Supra)* is of no avail to the case of petitioners because the said decision has been rendered in the context of Class III and IV employees. It is pertinent to note that petitioners are Board level Executives and so, they cannot be treated at par with Class-III and IV employees. Impugned recovery can neither be said to be harsh or arbitrary, nor there is any equity in favour of petitioners, as Supreme Court while dealing with the case of teachers in *Chandi Prasad Uniyal (Supra)* has categorically ruled that any amount paid / received without authority of law is always recoverable. The plea of mistake of authorities and there being no misrepresentation or fraud on the part of employees, was held to be untenable in *Chandi Prasad Uniyal (Supra)*.

9. In the instant case, petitioners have already executed the bond prior to their retirement to repay the excess amount received in context of these Stagnation Increments. So, plea of impugned recovery notices being belated is negated. The plea of discrimination raised by petitioners is half baked as details of alleged discrimination are not forthcoming. However, Presidential Directive pertaining to impugned order dated 1st August, 2014 (*Annexure P-5*) be sought by respondents, if not already done. No extreme hardship has been pleaded. In the facts and circumstances of this

case, it cannot be said that the impugned recovery is harsh or arbitrary. There is no equity in favour of petitioners and the facts of the instant case justify recovery of excess payment made on account of grant of Stagnation Increments consecutively.

10. In the aforesaid view of the matter, these petitions and applications are dismissed while vacating interim orders.

(SUNIL GAUR)
JUDGE

February 06, 2018

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