

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

*Reserved on: 15<sup>th</sup> November, 2018*  
*Pronounced on: 27<sup>th</sup> November, 2018*

+ **LPA 246/2018 & C.M. No. 18028/2018**

T N VEERARAGHAVAN ..... Appellant  
Through: Mr V. Shekher, Senior Advocate  
with Mr Kamal Kumar Pandey and  
Mr Deepak Goel, Advocates.

versus

UNION OF INDIA AND ANR. .... Respondents  
Through: Mr Sarat Chandra, Advocate for R-1  
Mr Saurav Agrawal, Ms Aakriti  
Dawar, Mr Vibhu Anshuman and Mr  
Anshuman Chowdhury, Advocates  
for R-2.

+ **LPA 249/2018 & C.M. No. 18045/2018**

BONTHA PRASADA RAO ..... Appellant  
Through: Mr V. Shekher, Senior Advocate  
with Mr Kamal Kumar Pandey and  
Mr Deepak Goel, Advocates.

versus

UNION OF INDIA AND ANR ..... Respondents  
Through: Mr Sarat Chandra, Advocate for R-1  
Mr Saurav Agrawal, Ms Aakriti  
Dawar, Mr Vibhu Anshuman and Mr  
Anshuman Chowdhury, Advocates  
for R-2.

+ **LPA 250/2018 & C.M. No. 18050/2018**

P.K BAJPAL ..... Appellant  
Through: Mr V. Shekher, Senior Advocate

with Mr Kamal Kumar Pandey and  
Mr Deepak Goel, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr Sarat Chandra, Advocate for R-1  
Mr Saurav Agrawal, Ms Aakriti  
Dawar, Mr Vibhu Anshuman and Mr  
Anshuman Chowdhury, Advocates  
for R-2.

+

**LPA 251/2018 & C.M. No. 18058/2018**

R KRISHNAN

..... Appellant

Through: Mr V. Shekher, Senior Advocate  
with Mr Kamal Kumar Pandey and  
Mr Deepak Goel, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Sarat Chandra, Advocate for R-1  
Mr Saurav Agrawal, Ms Aakriti  
Dawar, Mr Vibhu Anshuman and Mr  
Anshuman Chowdhury, Advocates  
for R-2.

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE SANJEEV NARULA**

### **J U D G M E N T**

**SANJEEV NARULA, J**

1. The present appeal under Clause X of Letters Patent Appeal is directed against the impugned common judgment dated 6<sup>th</sup> February 2018 passed by the learned Single Judge in W.P.(C) 6950/2016, W.P.(C) 760/2017, W.P.(C) 762/2017 and W.P.(C) 790/2017 whereby the learned Single Judge

has dismissed the writ petitions and has allowed the Respondents to recover the excess amount allegedly paid to the Appellants on account of “stagnation increment” whilst they were in service.

### **Brief Background**

2. The Appellants are retired Directors of Bharat Heavy Electricals Ltd. (‘hereinafter referred to as the BHEL-Respondent No. 2). It is to be noted that Appellants have different dates of superannuation; date of receipt of stagnation increments and amounts sought to be recovered by Respondent No. 2. However, as the issues raised were identical, learned Single Judge decided all the writ petitions by way of a common order. Nonetheless, for the sake of clarity, table appearing in the succeeding Paragraph captures the differences in each case, though that does not warrant any of the appeals to be dealt with differently .

|                                   | LPA<br>250/2018  | LPA 249/2018                         | LPA 251/2018                  | LPA 246/2018                                 |
|-----------------------------------|------------------|--------------------------------------|-------------------------------|----------------------------------------------|
| <b>Content</b>                    | P K Bajpai       | B P Rao<br>[Director (IS & P) & CMD] | R Krishnan<br>[Director (HR)] | T N<br>Veeraraghavan<br>[Director (E,R & D)] |
| <b>Joining Below the Board</b>    | 27.03.1977       | 12.09.1978                           | 21.01.1977                    | 20.01.1977                                   |
| <b>Stagnation Increment</b>       | 2002, 2003, 2004 | 2002, 2003, 2004                     | 2002, 2003, 2004              | 2003, 2004, 2005                             |
| <b>Appointment Director Board</b> | 01.07.2011       | 01.09.2007                           | 01.04.2012                    | 07.01.2015                                   |

|                                             |                                                                     |                        |                          |                           |
|---------------------------------------------|---------------------------------------------------------------------|------------------------|--------------------------|---------------------------|
| <b>T &amp; C</b>                            | 09.05.2012                                                          | 16.09.2010             | 22.09.2014               | 19.03.2105                |
| <b>Pay in Scale<br/>75000-<br/>100000/-</b> | 77,450                                                              |                        | 75,550                   | 82,400                    |
| <b>Change in T<br/>&amp; C</b>              | 29.04.2015                                                          | 28.07.2015             | Fresh<br>22.09.2014      | First 19.03.2015          |
| <b>Pay</b>                                  | 75000/-                                                             | 75000/-                | 75,500/-                 | 82,400/-                  |
| <b>Bond</b>                                 | 29.05.2015                                                          | 23.12.2015             | 29.07.2015               | 26.06.2015                |
| <b>Superannuation</b>                       | 31.05.2015                                                          | 31.12.2015             | 31.07.2015               | 30.06.2015                |
| <b>Recovery</b>                             | 463604/-<br>(deducted)<br>832571/-<br>(deducted)<br>PRP<br>withheld | 1,41,815/-<br>(demand) | 9,23,948/-<br>(demanded) | 11,71,933/-<br>(demanded) |

3. The Appellants joined the services of Respondent No. 2 as Below board level executives and remained in continuous service, till such time they were selected by Public Enterprises Selection Board (PESB) and were appointed as Directors (Board Level). This appointment is contractual. During the period the Appellants were at Below Board Level, the Ministry of Heavy Industries, the Administrative Ministry of BHEL issued an office memorandum dated 25<sup>th</sup> June 1999, providing for revision of pay scales for board level posts as well as below board level posts. The revision of pay scales was granted w.e.f 1<sup>st</sup> January 1997. Para 4 of the said OM deals with

stagnation increment and reads as under:

“4. There will be a provisions for a grant up to a maximum of three stagnation increments for those who reach the maximum of their pay scale.”

4. On 1<sup>st</sup> December 2000, the Ministry of Heavy Industries and Public Enterprises issued a presidential order and directed Respondent No. 2 to fix the pay scales and give other benefits to below board level executives as per the resolution passed by the Board of Directors of Respondent No. 2. Consequently, on 7<sup>th</sup> December 2000, a circular was issued, announcing the revision of salary grades and allowances in respect of executives and employees of Respondent No. 2. The aforementioned circular also dealt with stagnation increments. The relevant clause of the circular is as under:

5.5.1. If the basic pay of an employee reaches the maximum of the pay scale at any time during the period from 1.1.1997 to 31.12.2006, he will be eligible for grant of up to a maximum of 3 stagnation increments. The stagnation increments can be granted in the following year only i.e. one year after the employee has reached the maximum of the scale.

5. Pursuant to the aforesaid circular, the Appellants on reaching the maximum of their pay scales, were granted stagnation increments by Respondent No. 2 **consecutively** for a period of three years.

6. Pursuant to the recommendation of second Pay Revision Committee (Second PRC), next pay revision fell due w.e.f 1<sup>st</sup> November 2007. This was brought about by issuance of the office memorandum dated 26<sup>th</sup> November 2008. This OM also provided for stagnation increments as

under:

i) stagnation Increment: The rate of stagnation increment will be 3% of the revised basic pay and executives will be allowed to draw maximum three stagnation increments, **one after every two years**, upon reaching the- maximum of the revised pay scale provided the executive gets a performance rating of "Good" or above.

7. In terms of the above OM, Respondent No. 2 granted stagnation increments to its employees every two years after the second pay revision i.e. w.e.f. 1<sup>st</sup> January 2007. Respondent No. 1 received certain representations from different Ministries requesting for re-fixation of pay of Board Level Executives and while considering the same, Respondent No. 1 issued another office memorandum dated 3<sup>rd</sup> June 2011. This OM also dealt with stagnation increments and provided as under:

(ii) Stagnation increment can only be granted after reaching the maximum of scale of pay, **once after two years** and a maximum of three only.

8. To complete the narrative, it is also to be noted that on 14<sup>th</sup> December 2012, Respondent No. 1 had issued another office memorandum dealing with revised procedure for finalisation of terms and conditions including pay fixation in respect of Board Level Executives of CPSE's. This office memorandum also deals with stagnation increments and the relevant clause in the said OM has been set out below:

iv) stagnation Increment will be permissible only after reaching the maximum of the scale. As there are no fixed stages of Increment in 2007 pay scales, the last Increment due in scale before reaching the maximum of the scale, may be less than 3%.

Stagnation Increment will be provided **once after every two years**, and there can be a maximum of three stagnation increments in a grade (Appendix, example 11).

9. After nearly 12 years, on 1<sup>st</sup> August 2014 Respondent No. 1 wrote to Respondent No. 2 stating that while finalising the terms and conditions of Board Level Executives in BHEL, it had come to its notice that Respondent No. 2 had granted stagnation increments **consecutively** for three years on award of 1997 pay scales. According to Respondent No. 1 this grant of increments was contrary to the guidelines issued by DPE. Respondent No. 1 called upon Respondent No. 2 to refix the pay in respect of existing Board Level Executives and recover any excess payment made on account of stagnation increments.

10. The Appellants protested against this recovery. Representations were made to Respondent No.2, the employer, who took up the matter with Respondent No.1. However, before the issue would be resolved, Appellants approached their superannuation. Against this backdrop, in 2015, Respondent No.2 unilaterally altered the terms and conditions of their appointment as Directors ( except for the Appellant in LPA no. 246/ 2018, who was appointed after 1st August 2014 ). The Appellants also executed a bond which stipulates that they are bound to the liability of remitting the amount of stagnation increments granted in violation of the rules.

11. It be noted that Respondent No. 2 in it's representation to its administrative ministry also brought to their notice the judgment of the Supreme Court in the case of *State of Punjab v. Rafiq Masih 2015 4 SCC*

334, requested them to give further directions on the issue. However, Respondent No. 1 vide its communication dated 25<sup>th</sup> February 2016 reiterated its earlier stand and requested Respondent No. 2 to comply with the instructions dated 1<sup>st</sup> August 2014.

12. Respondent No. 2 issued recovery notices to the Appellants and called upon them to deposit the excess payment made to them on account of stagnation increments.

13. Aggrieved with the aforesaid action of Respondent No. 2, the Appellants filed the writ petition challenging the recovery notices dated 01.07.2016 and 13.09.2016. The writ petitions were dismissed. The learned Single Judge while dismissing the petition has also directed Respondent No. 2 to take presidential directive in respect of the order dated 1<sup>st</sup> August 2014, if not already done.

### **Submissions of Parties**

14. Mr. V. Shekhar learned senior counsel appearing on behalf of the Appellants has urged that Respondent No. 2 ought not to have proceeded with the action of recovery, merely because Respondent No. 1 had directed it to do so. According to him, there was no plausible/justifiable reason for Respondent No. 1 to say that payments made on account stagnation increments were made in excess. Respondent No.1 had misconstrued the OM dealing with stagnation increments. According to him, the Appellants were granted stagnation increments when they were working as Below Board Level Executives and the said increments were correctly paid

pursuant to the OM dated 25<sup>th</sup> June 1999 on first pay revision w.e.f. 1<sup>st</sup> January 1997. He further argued, that the said OM did not stipulate the interval in which such stagnation increments were to be granted. Since no interval was granted, the Respondent No. 2 correctly granted stagnation increments on yearly basis. It is not in dispute that the Appellants became due for stagnation increments as they had reached maximum of their pay scales. Mr. V. Shekhar urged that since office memorandum on 26<sup>th</sup> November 2008 was in respect of the second pay revision w.e.f. 1<sup>st</sup> January 2007, the clause contained therein providing for an interval of two years was applicable to 2nd pay revision. His argument is that the terms of each pay revision are independent and have to be applied in accordance with the clauses provided therein. The 2<sup>nd</sup> pay revision stagnation increments would have to be applied on the pay scale provided therein. Mr. V. Shekhar urged that the understanding of Respondent No.1 is fallacious by referring to para 5 of the counter affidavit filed by to the writ petitions. The same reads as under :

“5. (c) Though DPE guidelines issued, for award of 1997 pay revision had not mentioned the interregnum for payment of stagnation increments, it also did not mention that stagnation increment would be given in consecutive year for three years. If increment is given in consecutive years, the intention of stagnation increment is nullified. Moreover, in case of ambiguity on this issue, BHEL should have sought clarification from DITE DHI, but it had not done so. In this regard it is further submitted that Ministry of Finance, Department of Expenditure, vide OM 1.(9)/E.III-A/97 dated 22.07.1998 (Please see Annexure R-1/2'), issued in respect of recommendation of Fifth Central Pay Commission inter-alia envisages that all central Government employees who have opted for the revised scales of

pay-in terms of the Central Civil Service (Revised Pay) Rules, 1997, and who may reach the maximum of the scales of pay shall -be granted one stagnation increment on completion of every two years, at the maximum of the respective scales. This shows that in Government of India, even in 1998, there was a provision that stagnation increment could be given on completion of every two years at the maximum-of the respective scales. It is further submitted that administrative-matters including pay fixation of below board level officials are looked after by the CPSEs itself and therefore .onus lies on the BIIEL to make recovery of excess payment made to below Board level; officers on account of stagnation increment.

5. (d) The contents of sub para (d) are not correct in the manner stated. It is submitted that the applicants were, at the time of grant of stagnation increments, were responsible officers who were later appointed as CMD and Directors on the Board Of BHEL. Therefore, it is moral duty of the applicants who are/were senior executives to refund the excess amount drawn by them as an honorable course of action befitting their status. One of the Directors, Shri-WVK Krishna Shankar has already deposited the entire recoverable amount i.e. Rs. 10,71,017/- with BHEL. in exemplary demonstration of dignified conduct by a senior executive. Similar action is expected from the petitioners as well.”

15. Since the Respondents resolutely rely on office memorandum dated 22<sup>nd</sup> July 1998 to justify its directions to Respondent No. 2 , it would be appropriate to reproduce the same. The said OM reads as under :

“The undersigned is directed to say that the Fifth Central Pay Commission in para 22.39 of their Report have recommended that the existing rules for grant of stagnation increment should continue. Further, it has been recommended that the facility should be available subject to the condition that the basic pay plus stagnation increment(s) should not exceed Rs. 22,000/- per

month in the revised scales of pay. The Government have considered this recommendation.

2. In partial modification of the recommendations and in supersession of all previous orders on the subject, the President is pleased to decide that all Central Government employees who have opted for the revised scales of pay in terms of the Central Civil Service (Revised Pay) Rules, 1997, and who may reach the maximum of the revised scales of pay shall be granted one stagnation increment on completion of every two years at the maximum of the respective scales. The stagnation increment shall be equal to the rate of increment last drawn by them in their pay scales. A maximum of three such increments shall be allowed subject to the condition that the grant of stagnation increments shall be restricted to all posts the maximum of the pay scale of which does not exceed Rs. 22,400/-.”

16. Besides, Mr. V. Shekhar also submits that the learned Single Judge has also erred in not appreciating the decision of the Supreme Court in the matter of **Rafiq Masih**(supra) and the guidelines issued by DoPT dated 2<sup>nd</sup> March 2016,. According to him demand of recovery is contrary to the aforesaid guidelines.

17. Mr. Sarat Chandra, learned counsel appearing for Respondent No. 1 urged that the direction given to Respondent No. 2 to make recoveries, was in consonance with the office memorandum dated 22<sup>nd</sup> July 1998. He urged that Government of India in 1998 has provided for grant of stagnation increments and such grant was subject to an interval of two years. According to him, the Appellants’ case was not covered under any of the illustrations/ instances given in the judgment of Supreme Court in the matter of **Rafiq Masih** (supra) or even under the guidelines issued by the

DoPT dated 2<sup>nd</sup> March 2016. He further urged that the Respondent No. 1 had also sought intervention of Department of Legal Affairs, Ministry of Law and Justice , but the said ministry was also of the opinion that the recovery orders made against the Board Level Executives of BHEL, were proper and the Appellants were not entitled to the benefits granted erroneously .

18. Lastly, he urged that pursuant to recovery demand, some of the Directors had voluntarily refunded the amount and appellants should do likewise.

19. Mr. Anshuman Chadhary learned counsel appearing for the Respondent No. 2 urged that the recoveries were made pursuant to the directions of Respondent No. 1 and that the Appellants were duly bound by the bonds signed by them.

### **Findings**

20. In the impugned judgment, the learned Single Judge has principally decided the petitions on the question of right to recovery of the Respondents in light of the judgment of the Supreme Court in the matter *Rafiq Masih* (supra). Before we deal with this aspect, and examine the yardstick for exercise of such a right by the Respondents it is necessary to first come to a conclusion as to whether the amount that is now sought to be recovered, is indeed recoverable or not.

21. Therefore, before averting to the question of applicability of the

judgment of the Supreme Court, we are proceeding to examine the context in which the question of recovery has arisen. The genesis of the demand is the communication dated 1st August 2014 written by Respondent No. 1 to Respondent No.2. This letter states that Respondent No.2 has given the increments wrongly, as the same is in contradiction to DPE guidelines on stagnation increments. However, the said communication makes a general reference to “DPE guidelines”, and fails to give any details . We note that much later, i.e vide letter dated 25th February 2016, Respondent No.1 gave some clarity on this aspect. But this clarity infact rather makes the recovery doubtful .This letter mentions the OM’s that according to Respondent No.1 stood violated by grant of consecutive increments. The said OM’s are dated 3<sup>rd</sup> June 2011 and 14<sup>th</sup> December 2012 and also the OM’s that were issued subsequent to the grant of 2<sup>nd</sup> pay revision as the DPE guidelines.

22. The three **consecutive** increments were granted pursuant to the first pay revision. The relevant OM for first pay revision is dated 25th June 1999 and not the OM’s mentioned in the aforesaid letter. The stagnation increment clause in the OM of 1999 does not provide for any interregnum/interval. This OM was also subsequently adopted by Respondent No. 2 by way of a Presidential Directive dated 1<sup>st</sup> December 2000 and the circular dated 7<sup>th</sup> December 2000. Therefore, the entire premise on the basis of which the Respondent No. 1 has issued the directions to Respondent No. 2, is a complete misconstruction of the OM’s that are applicable to the 2nd pay revision. It is also pertinent to note that the Presidential Directive of year 2000 implementing first pay revision and increments continues to hold ground and has neither been challenged by the Respondents nor has been

amended till date.

23. In *Sureshchandra Singh v. Fertilizer Corpn. of India LTD* (2004) 1 SCC 592, the Apex Court has held as under:

“4. By OM's dated 25-1-1991 and 8-4-1991, the Ministry of Program Implementation and Department of Public Enterprises made it clear that all instructions/guidelines issued by the Government of India would be of two kinds: a) Directives issued in the name of President of India, and b) guidelines. Directives would be issued by the Administrative Ministry in the name of the President while all other instructions issued by the Department of Public Enterprise or by the Administrative Ministry are only advisory which the Board of Directors of the concerned Public Sector Undertakings may in their discretion adopt or not for reasons to be recorded in writing.

6. It is also to be noted that the OM dated 19-05-1998 itself does not raise the retirement age to sixty years. It is only an administrative direction and Court cannot issue a writ to enforce such administrative instructions that is not having the force of law.”

24. For the first time, Respondent No. 1 in its counter affidavit has taken a plea that does not appear in any of the earlier communications. The counter affidavit refers to the OM dated 22<sup>nd</sup> July 1998. Though Respondent no.1 cannot be permitted to take a plea that is not discernible from its original stand, we are also examining its correctness. On examination of the said OM it becomes evident that the same is not applicable to the Appellants. The 1998 OM has been issued by Ministry of Finance and it deals with the recommendations of the 5<sup>th</sup> Pay Commission for grant of ad hoc increments

to employees stagnating at the maximum of grade scales of pay. It clearly stipulates that the 5<sup>th</sup> Pay Commission has recommended that the existing rules for grant of stagnation increments should continue subject to the condition that the basic pay plus stagnation increment should exceed Rs. 22,000 per month in the revised scales of pay. We do not understand as to how the Respondent No. 1 is relying on the said OM. On a specific query by the bench to the counsel appearing for Respondent No. 1 to explain the relevancy of the said OM, no answer was forthcoming.

25. We would also like to record after the conclusion of the arguments and subsequent to the judgement being reserved, Respondent No.1 filed an application bearing CM No. 48471/2018 seeking to place on record additional documents. The said Application was allowed and documents enclosed were taken on record. These documents are appointment letters issued to the Appellants. Relying on clause 1.6 and Para 2 of the said letters, reproduced hereinafter it is contended that OM Of 1998 is applicable to the Appellants. The said clause has been reproduced herein below:

"1.6 **Annual Increment**: He will be eligible to draw his annual increment @ 3% of basic pay on the anniversary date of appointment in the scale and further increments on the same date in the subsequent years until the maximum of pay scale is reached. after reaching the maximum of the scale, one stagnation increment equal to the rate of last increment drawn will be granted after completion of **ever two year period** from the date he reaches the maximum of his pay scale provided he gets a performance rating of "Good" or "Above". He will be granted a maximum of three such stagnation increments.

2. In respect of any other item, concerning him which is not covered in proceeding paras he will be governed by the relevant Rules/instructions of the CPSE/Government."

26. As noted above the aforesaid letters were also unilaterally amended in 2015, by insertion of the following clause:

1.17 Excess payment recovery: BHEL would recover the excess payment if any, from Shri T.N.Veeraraghavan before his superannuation, on account of stagnation increments granted to him in violation of Government rules/ DPE guidelines on award of 1997 ways revision/pay scale.

27. On a perusal of the appointment letters, and the amendments, we are of the opinion that the above mentioned Paragraph 2 is rather general and residuary in nature. Clause 1.6 deals with increments to be granted as Board Level Appointees. It cannot have a retrospective application for a period when Appellants were Below Board Level. Likewise Clause 1.17 inserted in year 2015 cannot be applied retrospectively.

28. It is also to be noted that all the Appellants were appointed on contractual basis and their employment is governed by the terms and conditions, which are fixed independently.

29. In view of the above, we are of the opinion that the amount which is sought to be recovered from the Appellants has no justification. Further, a perusal of the documents filed by the Appellants along with their reply to the application mentioned herein above, makes it amply clear that 30 persons employed in BHEL who were subsequently appointed at the board

level have received stagnation increments, however Respondent No.2 has sought recovery only from some of the persons named herein. This appears to be arbitrary. In view of the above discussion, we hold that, the recovery notices deserve to be quashed. Although the question regarding the right to recover becomes mute in view of our observations made above, we are nevertheless also examining the law relating to the right of Government to recover the amount from the Government servants to whom excess payment has been made during the course of service. The authoritative pronouncement on this subject is a decision of Supreme Court in the matter of Rafiq Masih (supra). By the said decision, the Supreme Court has held that the employer has right to recover benefits wrongly extended to the employees. However the Supreme Court has also held that such recovery would not be permissible in every case and the courts would have jurisdiction to interfere when it finds that recovery would result in causing hardship or would be iniquitous. While postulating such instances where the recovery would be permissible, the Supreme Court has observed as under:

**“12.** It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summaries the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or 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.”

30. The Hon’ble Supreme court has observed in para 11 as under:

“First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir's case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which

would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee. In this context, reference may also be made to the decision rendered by this Court in ***Shyam Babu Verma v. Union of India*** (1994) 2 SCC 521, wherein this Court observed as under:

11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.

It is apparent, that in Shyam Babu Verma's case (supra), the higher pay- scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby

hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.”

31. On a careful reading of the aforesaid observations of the Supreme Court, it clearly emerges that while the Court has held that the employer has a right to recover (sums wrongly paid to employees), such right cannot be iniquitous or arbitrary. Where the recovery is arbitrary, the recovery would be in violation of Article 14 of the Constitution. The Supreme Court has held that incase the recovery is sought to be made after a period in excess of five years, the same would be iniquitous and arbitrary. In the present case, the recovery is being sought to be done in 2016, in respect of increments granted for the period 2002-05. The Appellants were not at fault on any count. The stagnation increments were granted by Respondents, on the basis of their misunderstanding of office memorandum issued by Respondent No. 1. In absence of any fraud, misrepresentation or error on the part of the Appellants, at this stage, the recovery sought to be done by Respondents would not have the element of being harsh and iniquitous for the Appellants.

32. The learned Single Judge has held that the judgment of the Supreme Court does not help the case of the Appellants. The observations of the Learned Single Judge do not appear to be correct. The situations of hardship, that have been spelt in para 12, do not deal only with Class 3 or Class 4 service (Group C or Group D Service). Further the Supreme Court has held that the situation provided in para 12 are only as a ready reference. The situations enumerated in Paras (ii ) to ( v ) deals not only with Group C

and D services but would apply across the board. Further, the learned Single Judge has referred to the office memorandum on 22<sup>nd</sup> July 1998, but has not discussed its applicability to the facts of the present case. There is no discussion in the impugned judgment regarding the validity of the recovery demands. The learned Single Judge has referred to the judgment of the Supreme Court in *Chandan Prasad Uniyal v. The State of Uttarakhand* 2012 8 SCC 417, and has held that the amount paid without authority of law is legally recoverable. As we discussed above, there is no dispute regarding the employer's right to make recovery, in case of an amount that has been paid erroneously or under a mistake. However the right of recovery has to be decided keeping in view the principles of arbitrariness and inequity as held by Supreme Court in the case of *State of Punjab v. Rafiq Masih* (supra).

33. The learned Single Judge has further rejected the plea of the impugned recovery notices being belated or delayed, on the ground that the Appellants have executed a bond prior to their retirement which stipulates that the excess amount in the context of stagnation increments can be recovered. With respect, we feel that this observation is completely misplaced, in as much as all the Appellants had executed the bond in 2015. The Appellants had no other option but to execute the bond since they were about to superannuate. The bonds are nonetheless related to the erroneous payments made during the period from 2002-05. Therefore, the learned Single Judge has erred in having failed to appreciate that there was a gross delay to raise the issue of recovery and the same is contrary to the observation of Supreme Court in para No. 11 in the case of *Rafiq Masih*

*(supra)*.

34. In view of the above, the impugned judgment is set aside. The recovery notices issued by Respondent No. 1 are quashed. The appeals are allowed and the applications are disposed of in the above terms.

**SANJEEV NARULA, J**

**S. MURALIDHAR, J**

**NOVEMBER 27, 2018**

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