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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 12286/2018****DHIRENDRA KUMAR SINHA**

.....Petitioner

Through: Mr. Tushar Ranjan Mohanty,
Ms. Payal Mohanty, Ms. Yogita Singh, and
Mr. Tarunveer Singh, Advs.

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Mr. Rakesh Kumar, CGSC with
Mr. Sunil, Adv.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****JUDGMENT (ORAL)**

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04.02.2025**C. HARI SHANKAR, J.**

1. The petitioner, who was working as Assistant Director (Metallurgy) in the Ministry of Micro, Small and Medium Enterprises¹, on being selected in the RITES² as Deputy Manager (M & C), tendered his technical resignation from the MSME on 3 May 2007 and joined RITES on 4 May 2007. He was later absorbed in RITES with effect from 4 May 2007, the date of his joining.

2. On 5 September 2013, the Central Pension Accounting Office³,

¹ "the MSME" hereinafter

² Rail India Technical and Economic Service

³ "CPAO" hereinafter, and Respondent 2 herein



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Ministry of Finance, issued a Pension Payment Order⁴, computing the pension payable to the petitioner consequent on the service rendered by him in the MSME. Note 3 at the foot of the PPO read thus:

“3. DR⁵ is Admissible on Basic Pension and Additional Pension if any.”

3. Though DR is ordinarily payable on pension, Mr. Mohanty, who appears for the petitioner, does not dispute the position that DR would not be admissible to a pensioner who takes re-employment elsewhere, as per Office Memorandum⁶ dated 2 July 1999 issued by the Department of Pension & Pensioners' Welfare⁷, in terms of the recommendations of the 5th Central Pay Commission, the relevant clauses of which read thus:

“3. These recommendations have been considered and accepted by the Government. The President is accordingly pleased to decide as follows:

(a) In so far as re-employed pensioners are concerned, the entire pension admissible is to be ignored at present *only in the case of those civilian pensioners who held posts below Group 'A' and those ex-servicemen who held posts below the ranks of Commissioned Officers at the time of their retirement.* Their pay, on re-employment, is to be fixed at the minimum of the pay scale of the post in which they are re-employed. Such civilian pensioners will consequently be entitled to Dearness Relief on their pension in terms of the recommendations of the 5th Central Pay Commission at the rates applicable from time to time.

4. (II)(a) In the case of Central Government pensioners who were/are re-employed under the Central Government or the

⁴ PPO

⁵ Dearness Relief

⁶ OM

⁷ DOPPW



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State Government or a Corporation/Company/Body/Bank including an autonomous organisation under them in India or abroad or had/have been permanently absorbed in such corporation/company/body/bank or autonomous organisation, dearness relief will now be admissible to such of those re-employed pensioners who satisfy the conditions referred to in para 3(a) above. ...

(III)(d) In all other cases of re-employed pensioners, no dearness relief shall be admissible on pension during the period of their re-employment. Payment of dearness relief in these cases shall become admissible only with effect from the date they cease to be re-employed.”

Rule 55-A of the Central Civil Services (Pension) Rules, 1972, was also suitably amended by inserting, therein, clause (ii). As amended, Rule 55-A read:

“55-A. Dearness Relief on Pension/Family Pension

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/ Body/ Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment.”

4. While employed with RITES, the petitioner had to submit a Declaration regarding drawal, by him, of DR on Pension. In the said declaration, while filling in all the formal details, in respect of the drawal, by him, of DR on Pension, the petitioner submitted thus:



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“13.	Bank Account no.	
14.	Details of period from which dearness relief on pension have been drawn; from to	Available with Bank
15.	Copy of last declaration submitted to Bank attached	Available with Bank”

Clearly, therefore, the petitioner was being evasive with respect to the fact that he was drawing DR on Pension, despite not being entitled thereto, and was also not forthcoming even regarding the details of his Bank account.

5. On coming to learn that the petitioner was, in fact, drawing DR on pension despite not being entitled thereto, the PAO, MSME issued a communication to the CPAO on 2 February 2017, requesting the CPAO to make the following amendments in the PPO dated 5 September 2013:

“DR on pension may be admissible only after retirement from re-employment post as per Rule 55-A of CCS (P) Rules.”

The communication also requested the CPAO to adjust/recover payments of DR made to the petitioner from the date of his absorption in the RITES.

6. Assailing the aforesaid communication dated 2 February 2017, the petitioner approached the Central Administrative Tribunal⁸ by way of OA 1024/2017. In the OA, the petitioner averred that he had received the communication dated 2 February 2017 on 18 March 2017 on returning from Kolkata, where he was then posted, to Delhi. The

⁸ “the Tribunal” hereinafter



petitioner contended that the proposed recovery of DR paid to him on the pension payable as a result of the service rendered by him in the MSME, was impermissible in view of para 18 of the judgment of the Supreme Court in *State of Punjab v Rafiq Masiq*⁹, which reads thus :

“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.”

(emphasis supplied)

7. The petitioner contended that the proposed recovery from him

⁹ (2015) 4 SCC 334



was in the teeth of Clauses (ii) and (iii) of para 18 of **Rafiq Masih** which prohibited recovery from employees who were due to retire within a year and recovery from employees whom excess payment had been made more than five years prior to the recovery. The petitioner contended that both of these clauses applied, as the excess payment had been paid to him more than five years prior to the order of recovery and he already stood retired from the MSME and had less than one year left to superannuate from RITES.

8. The CPAO in its counter affidavit, filed before the Tribunal, emphasised the fact that the petitioner had continued to draw DR on the pension paid to him on account of service rendered by him in the MSME, in full awareness of the fact that he was not entitled to do so. When he was called upon to file a declaration regarding the DR drawn by him, against the entry calling on him to furnish the details of DR drawn, the petitioner merely entered “available with bank”. The details of the petitioner’s bank account were also not furnished, despite a specific entry being present in the form, requiring him to do so. In these circumstances, the CPAO sought to contend that the petitioner could not seek to avail the equitable dispensation against recoveries, contained in para 18 of **Rafiq Masih**.

9. The Tribunal has, by its judgment dated 9 October 2018, observed and reasoned as under:

“6. It is a settled legal position as held by the Hon’ble Apex Court way back in 1995 in the case of **Union of India And Others v G. Vasudevan Pillay And Others**¹⁰, where the decision of Union

¹⁰ (1995) 2 SCC 32



of India not to allow Dearness Relief on pension to an ex-serviceman was taken up for consideration, it was held that denial of dearness allowance to ex-serviceman is legal and just. It is also brought to our notice that after the passing of the aforesaid judgment by the HON'BLE Supreme Court, Office Memorandum dated 13.10.1995 was issued to the effect that in all cases where employees have been paid dearness relief on pension, the Department would be well within its right to recover the dearness relief and this memorandum would show that no penalty was to be imposed on the serviceman, who had received the dearness allowance.

7. Applicant has not refuted the fact that dearness relief on pension is not admissible to the re-employed pensioner. From the reply filed by the respondents they have clearly stated that applicant has not clearly mentioned that he is getting Dearness Relief on pension as well. He simply submitted that details of period from which dearness relief on pension have been drawn are available with bank. On his re-employment in RITES, the applicant should not have drawn the Dearness Relief on pension. When the applicant himself is at fault for not apprising the correct fact about the dearness relief on pension to the RITES where he was reemployed after tendering his technical resignation, it may be that it could not be intimated by him at that time as he was only granted provisional pension and the PPO was issued only in 2013 for release of regular pension after the applicant was exonerated from the charges levelled against him in a departmental inquiry initiated against him. Vide PPO issued in 2013, the regular pension commenced from 4.5.2007, as such at the most in 2013 after receipt of PPO order, it was incumbent upon the applicant to intimate the concerned authority about the status of dearness relief on his pension amount which was received in 2013 and thereafter. But applicant has not adverted on this aspect in his OA nor has he chosen to give reply to the said averment of the respondents as raised by them in their counter reply, by filing his rejoinder.

8. Applicant has alleged that the impugned order is not sustainable on the ground of judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) as well as OM dated 2.3.2016 as also the impugned recovery order has been issued without issuing any show cause notice

9. So far as judgment of the Hon'ble Supreme Court in **Rafiq Masih** (supra) is concerned, in the said judgment, the Hon'ble Supreme Court while observing that 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 has summarized 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.

10. None of the above said conditions covers the case of the applicant having regard to the facts and circumstances of the present case. However, it is a fact that the Hon'ble Delhi High Court while disposing the aforesaid Writ Petition preferred by the applicant directed the respondents to work out the amount to be adjusted/recovered in respect of the dearness relief and they shall give one week's notice to the applicant before adjusting/recovering the same so as to enable him to take appropriate steps in that respect before the Tribunal. The said Writ Petition was disposed of by the Hon'ble High Court vide Order dated 26.4.2017. However, as stated by the respondents, out of total amount of Rs.5,30,634/-, Rs.4,30,000/- in respect of dearness relief on pension was recovered from the applicant's bank account on 16.3.2017, i.e., before filing of the said Writ Petition and the balance amount of Rs.1,00,634/- will be recovered from applicant's monthly pension in installments. As such there was no occasion for the respondents to comply with the aforesaid directions of the Hon'ble High Court before affecting the said recovery. However, when the Hon'ble High Court gave the aforesaid directions vide Order dated 26.4.2017, even though they had already recovered the part of the amount of dearness relief paid to the applicant on his pension to which he is admittedly not entitled to, they are required to give the complete details of the amount to be adjusted/recovered in respect



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of the dearness relief and give one week's notice for recovery of the balance amount not recovered before the Hon'ble High Court's directions. Thereafter, they will pass final orders on their decision."

10. Aggrieved by the aforesaid judgment of the Tribunal, the applicant before the Tribunal has petitioned this Court under Article 226 of the Constitution of India.

11. We have heard Mr. Tushar Ranjan Mohanty, learned Counsel for the petitioner and Mr. Rakesh Kumar, learned CGSC for the respondent, at length.

12. Mr. Mohanty does not dispute the fact that, as the petitioner had been re-employed in the RITES, consequent to his retirement from MSME, he was not entitled to draw DR on pension. He also does not dispute the fact that the petitioner was in fact drawing DR on pension. Nonetheless, he submits that, the case squarely falls within Clauses (ii) and (iii) in para 18 of *Rafiq Masih*. These clauses, he emphasised, absolutely proscribed recoveries from persons due to retire within year as well as in cases where the recovery alleged overpayment made more than five years prior thereto. Mr. Mohanty submits that the petitioner already stood retired from MSME and had less than a year left to retire from RITES, when the recovery order was issued.

13. Apropos the declaration submitted by his client to RITES, with respect to the DR being drawn by him, and the omission, on the part of the petitioner, to provide the details of the DR drawn, Mr. Mohanty submits that there was no malafides involved in the manner in which



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the petitioner filled up the form. He submits that the petitioner's bank account was at Delhi and the petitioner was posted at Kolkata and it was for this reason that, as the details of the deposit of DR in his bank account were not forthcoming, the petitioner stated that the details of the DR were available with the bank. This, he submits, cannot be regarded as deliberate concealment so as to disentitle his client from the benefit of para 18 of *Rafiq Masih*.

14. As against this, Mr. Rakesh Kumar, learned CGSC for the respondent, submits that, in a case such as this, *Rafiq Masih* would be inapplicable. He submits that the petitioner was guilty of concealment of fact, by being less than forthcoming regarding the details of the DR drawn by him, on the pension paid to him on account of his service in MSME and could not, therefore, claimed to have been forthright in that regard. Absence of forthrightness, he submits, would disentitle the petitioner from the benefit of para 18 of *Rafiq Masih*.

Analysis

15. Before dealing with the contentions advanced, we may note the position in law.

16. *Rafiq Masih*, after considering the pre-existing law on the subject, set out, in para 18, as already reproduced *supra*, specific circumstances in which recovery of amounts overpaid to government servants or other similarly situated employees were impermissible.



17. Subsequently, certain limited caveats, into the dispensation contained in para 18 of *Rafiq Masih*, were introduced by the judgments in *Thomas Daniel v State of Kerala*¹¹ and *High Court of Punjab & Haryana v Jagdev Singh*¹².

9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

10. In *Sahib Ram v State of Haryana*¹³ this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees. It was held thus:

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be

¹¹ 2022 SCC OnLine SC 536

¹² (2016) 14 SCC 267

¹³ 1995 SCC (L&S) 248



recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

11. In *Col. B.J. Akkara (Retd.) v Government of India*¹⁴ this Court considered an identical question as under:

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (*vide Sahib Ram v State of Haryana (supra)*), *Shyam Babu Verma v Union of India*¹⁵, *Union of India v M. Bhaskar*¹⁶ and *V Gangaram v Regional Jt. Director*¹⁷:

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

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

¹⁴ (2006) 11 SCC 709

¹⁵ (1994) 2 SCC 521

¹⁶ (1996) 4 SCC 416

¹⁷ (1997) 6 SCC 139



judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

12. In *Syed Abdul Qadir v State of Bihar*¹⁸ excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would

¹⁸ (2009) 3 SCC 475



not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

13. In *State of Punjab v Rafiq Masih (White Washer)* (supra) wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery.”

High Court of Punjab & Haryana v Jagdev Singh

“9. The submission of the respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the State. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer *at the time when his pay was initially revised* accepting that any payment found to have been made in excess would be liable to be adjusted. *While opting for the benefit of the revised pay scale*, the respondent was clearly on notice of the fact that a future refixation or revision may warrant an adjustment of the excess payment, if any, made.”

(Emphasis supplied)

18. Thus, in *Thomas Daniel*, recoveries of overpayments, even if otherwise covered by para 18 of *Rafiq Masih*, has been held to be permissible where there is misrepresentation or fraud by the employee concerned. The Supreme Court has observed that the exceptions from



recoveries, as envisaged in para 18 of **Rafiq Masih**, were not because there inhered any right, in the employee concerned, to retain amounts which were erroneously overpaid to him, but keeping in mind the hardship and inequity which would result if recoveries were effected in the circumstances envisaged in para 18 of **Rafiq Masih**. Apart from the fact that, where there was fraud or misrepresentation on the part of the employee, the benefit of the said equitable dispensation would *ipso facto* not be available, the Supreme Court clarified, in para 9 of **Thomas Daniel**, that, even where there was proof that the employee was knowingly receiving payment in excess of that which was due to him, the Court could, in exercise of judicial discretion vested in it and based on the facts and circumstance of any particular case, uphold the decision to recover the excess payment.

19. Though it may not be directly applicable, “misrepresentation” is defined in Section 18 of the Indian Contract Act 1872 thus:

“18. “Misrepresentation” means and includes—

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;
- (3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.”

20. In our opinion, as Section 18 provides the only authoritative definition of “misrepresentation”, it would be legitimate to import this



definition into the concept of “misrepresentation” as envisaged in para 9 of *Thomas Daniel*.

21. P Ramanatha Aiyar, in its *Advanced Law Lexicon*, defines “misrepresentation” thus:

“Misrepresentation may consist as well in the concealment of what is true as in the assertion of what is false. If a man conceals a fact that is material to the transaction, knowing that the other party acts on the presumption that no such fact exists, it is as much a fraud as if the existence of such fact were expressly denied or the reverse of it expressly stated.”

22. In *Dowdall v Kelly*¹⁹, Crampton, J., stated, of “misrepresentation” thus:

“The words “misrepresent”, “misrepresentation,” do not, by themselves import wilful falsehood or malice; “misrepresentation of facts may be, and often is, innocent.”

23. Black’s Law Dictionary defines “misrepresentation” thus:

“Misrepresentation” 1. The act of making a false or misleading assertion about something, usu. with the intent to deceive. The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion.”

24. Thus, misrepresentation may be deliberate or innocent. While we have our reservations in accepting Mr. Mohanty’s contention that the entries made by the petitioner against serial nos. 13 to 15 of the declaration submitted by him to RITES were innocent, they amounted, innocent or otherwise, to misrepresentation.

25. In view of the aforesaid discussions and in the peculiar facts of this case, we do not feel that the petitioner can claim the benefit of

¹⁹ 4 Ir.Com. Law Rep 556



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Clause (ii) in para 18 of the judgment of the Supreme Court in *Rafiq Masih* for the following reasons:

(i) The petitioner does not dispute the fact that he was not entitled to DR on the pension which was drawn by him as a result of his services in the MSME, as he was re-employed in the RITES. This fact has also been noticed in para 7 of the impugned judgment.

(ii) Despite this, the petitioner continued to be paid DR on the pension drawn by him with respect to his service in MSME, as granted by the PPO dated 5 September 2013 issued by the CPAO.

(iii) Subsequently, on being called upon by the RITES to provide the details regarding drawl of DR on pension, the petitioner, against the column requiring him to fill details of period from which DR on pension have been “drawn; from to”, entered “available with the bank”. The details of the petitioner’s Bank Account were also not entered, at the appropriate place, despite a specific requirement to that effect.

26. We see no reason as to why the petitioner was so evasive.

27. Mr. Mohanty, learned Counsel for the petitioner, sought to contend that it was the respondent who was paying the DR to the bank and that, therefore, the entry “available with the bank” should not be



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treated as a misdeclaration.

28. We may note, here, two contentions advanced by Mr. Mohanty in this regard.

29. The first contention of Mr. Mohanty is that, as the respondents were themselves paying the DR to the petitioner's bank, the respondents were aware of the said fact and that the petitioner could not, therefore, be held guilty of any concealment or suppression. This submission omits to note the fact that we have before us more than one respondent. The respondent who was disbursing the petitioner's pensionary benefits to his Bank was the CPAO. The declaration in which the petitioner entered "available with the bank" was tendered to RITES and not to the CPAO. RITES was clearly not aware of whether the CPAO was including, in the petitioner's pensionary benefits credited to his bank, the DR. The entry "available with bank", therefore, remains as evasive as ever.

30. The second contention of Mr. Mohanty is that his client was at that time stationed in Kolkata and could not, therefore, provide the details of the DR which he was drawing. This submission, too, does not appeal to us. What was required to be entered by the petitioner was the details of the period from which he had been drawing DR, in the form of "from" and "to". The petitioner cannot possibly be heard to contend that he was not aware of the period from and to which he had drawn DR.



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31. Irrespective of whether the petitioner was at Kolkata or anywhere else, there was clearly no justification for the petitioner being evasive about the details sought against S. Nos 13 and 14 of the aforesaid form which was tendered by the petitioner to the RITES.

32. In view of the aforesaid, we are of the opinion that the petitioner has not been candid with the RITES on the fact that he was drawing DR on pension, despite his admittedly not being entitled to do so. We are decidedly of the view that the petitioner was guilty of “misrepresentation”, within the meaning of para 9 of *Thomas Daniel*. As already found by us earlier, the entries made by the petitioner against serial nos. 13 to 15 of the declaration submitted by him to RITES amounts to “misrepresentation” within the meaning of para 9 of *Thomas Daniel*.

33. In that view of the matter, we see no reason to interfere with the impugned judgment passed by the Tribunal.

34. The writ petition is, accordingly, dismissed with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

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