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

% *Date of Decision: 25th April, 2023*

+ W.P.(C) 1564/2019 & CM APPL. 7230/2019 & 9738/2021

MADAN MOHAN SHARMA AND ORS. Petitioners

Through: Mr. Dhruv Malik, Advocate.

versus

THE STATE TRADING CORPORATION OF INDIA

LTD. AND ANR. Respondents

Through: Mr. Tarkeshwar Nath, Mr. Lalit Mohan, Mr. Virat Saharan and Mr. Harshit Singh, Advocates for R-1.

Mr. Bhagvan Swarup Shukla, Central Government Standing Counsel for R-2/UOI.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. By this writ petition, Petitioners seek a writ of certiorari quashing the demand letters, all dated 25.04.2018, issued to them for recovery of amounts paid to them prior to their retirements as reimbursements towards electricity/attendant/gardener and entertainment charges/expenses towards maintaining their respective residential offices.

2. There are four Petitioners in the present writ petition and their respective dates of appointments and retirements as well as dates of demand letters and amounts sought to be recovered thereunder are given hereinbelow, in a tabular form:-

Sl. No.	Petitioner's name	Date of Appointment	Date of Retirement	Date and numbers of Demand Letters	Amounts
1.	Madan Mohan Sharma	30.07.2008	30.06.2014	25.04.2018 (STC/CO/PER/IR /02500(VOL-III)/ 2017/21/2018)	Rs.8,76,611/-

2.	Naresh Kumar Mathur	22.07.2005	30.11.2012	25.04.2018 (STC/CO/PER/IR /02500(VOL-III)/ 2017/23/2018)	Rs.6,59,029/-
3.	Nirmal Narendra Kumar	01.08.2006	11.12.2011	25.04.2018 (STC/CO/PER/IR /02500(VOL-III)/ 2017/20/2018)	Rs.4,30,704/-
4.	Sujoy Sonkar Roy Burman	01.05.2007	30.04.2012	25.04.2018 (STC/CO/PER/IR /02500(VOL-III)/ 2017/19/2018)	Rs.4,79,311/-

3. Petitioners were working at Board Level positions with Respondent No.1/The State Trading Corporation of India Ltd. (hereinafter referred to as 'STC'). Petitioner No.1 worked as Director (Personnel) from 30.07.2008 to 30.06.2014, Petitioner No.2 as Director (Marketing) from 22.07.2005 to 08.02.2009 and as Chairman and Managing Director from 09.02.2009 till 30.11.2012, Petitioner No.3 as Director (Finance) from 01.08.2006 to 11.12.2011 and Petitioner No.4 worked as Director (Marketing) from 01.05.2007 to 30.04.2012. STC is a Company wholly owned by the Government of India and under the administrative control of Respondent No.2 i.e. Department of Commerce, Ministry of Commerce and Industry, Government of India.

4. Shorn of unnecessary details, the facts necessary and relevant are that STC approved certain facilities and allowances to Senior Officials such as CMD/Directors/CVO/CGMs for maintaining residential offices w.e.f. 01.04.2005 after the decision was taken in a Board Meeting. These included reimbursements of: (a) electricity charges; (b) attendant charges; (c) gardener allowance; and (d) entertainment expenses.

5. Petitioners being senior officials and holding Board level positions, received the above benefits in the form of allowances, for maintaining the offices at their residences. An Office Memorandum

was issued by Department of Public Enterprises (DPE) on 26.11.2008 for revision of pay scales of Board Level and below Board Level executives and non-unionised Supervisors in Central Public Sector Enterprises (CPSEs) w.e.f. 01.01.2007. The O.M. specifically provided that the allowances and perks admissible to different categories of executives were subject to maximum ceiling of 50% of the Basic Pay.

6. On 23.12.2010, a circular was issued by STC in respect of Cafeteria-based perks and allowances for Board Level and below Board Level executive posts and as per the Petitioners although there was a mention of list of allowances to be withdrawn w.e.f. 01.12.2008, it did not include the earlier allowances payable from 01.04.2005. Petitioners were in receipt of the allowances till the time of their respective retirements. However, subsequently, show-cause notices, all dated 27.06.2017, were issued by STC to the Petitioners, *inter alia*, claiming recovery of the alleged wrongful/excess payments made to them during their service on account of the allowances paid towards maintenance of residential offices.

7. Respondent No. 2 issued a letter dated 09.05.2017 directing STC to recover the alleged excess/wrongful payments stating that the payments were in contravention of the DPE Guidelines. Petitioners replied to the show-cause notices between 05.07.2017 and 01.08.2017 and contested the recoveries. STC did not pay any heed to the replies and on 25.04.2018 issued demand letters to the Petitioners stating that the representations of the Petitioners along with their comments had been forwarded to Respondent No. 2, which in turn forwarded the same to DPE for its consideration, however, DPE conveyed its inability to waive the recoveries regarding excess payments towards perks and allowances. Therefore, STC called upon the Petitioners to

pay the amounts within three weeks from the date of receipt of the demand letters. Faced with the demands, Petitioners filed the present writ petition and by order dated 15.02.2019, this Court directed that till further orders, no coercive steps shall be taken against the Petitioners to recover the amounts in question and the interim order has continued till date.

Contentions on behalf of the Petitioners:-

(A). Action of STC to issue the show-cause notices followed by demand letters impugned herein, at the instance of Respondent No. 2, is illegal and arbitrary as there is no plausible reason to allege that payments made towards perks/allowances towards maintaining residential offices were in excess or wrongful and/or in contravention of DPE Guidelines. These payments were legitimate reimbursements made by STC to the Petitioners who were all Board Level senior officers for functional purpose of carrying out their official work from residence. This is fortified by the show-cause notices itself wherein STC refers to the decision taken by the Board of Directors of STC in their 534th Meeting held on 29.07.2005, whereby certain facilities and allowances were approved w.e.f. 01.04.2005, after due deliberations. After the decision of the Board, the payments were commenced in 2005 and continued till retirements. While Respondents are repeatedly asserting that the excess/wrongful payments were made in contravention of DPE Guidelines, however, there is no mention of what are those guidelines and which part of the guidelines has been allegedly contravened or violated.

(B). The show-cause notices reflect that the genesis of the recovery is the decision to introduce Cafeteria-based perks and allowances vide O.M. dated 26.11.2008 pegging them at a ceiling of 50% of the Basic Pay. However, Respondents are unable to explain the connection

between this O.M. which relates to allowances meant for managerial level positions and the payments sought to be recovered from the Petitioners on account of benefits introduced pursuant to a board meeting held on 29.07.2005. It is totally denied that Petitioners have been paid any excess or wrongful payments as sought to be claimed by the Respondents as an afterthought.

(C). It is undisputed that the alleged excess/wrongful payments were made by STC to the Petitioners of its own accord and pursuant to a Board decision and was not a result of any fraud or misrepresentation by the Petitioners. Payments were introduced from 01.04.2005 and were discontinued from 01.02.2016 and as a matter of record each of the Petitioners received the money in excess of five years till the show cause notices/demand letters were issued. The case of the Petitioners is squarely covered by the judgment of the Supreme Court in *State of Punjab and Others v. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334* and on both counts i.e. recovery post-retirement and with respect to amounts paid in excess of 5 years, Respondents are debarred from effecting the recoveries. In response to the demand letters, Petitioners categorically brought to the notice of the STC that no recoveries can be made in view of the judgment in *Rafiq Masih (supra)*, however, the demand letters were not withdrawn.

(D). Impugned action of the Respondents is not only against the judgment of the Supreme Court in *Rafiq Masih (supra)* but also violates the DoPT O.M. dated 02.03.2016, whereby after referring to the said judgment and after consulting the Department of Expenditure and Department of Legal Affairs, all Ministries/Departments have been advised to deal with the issue of wrongful/excess payments in accordance with the binding dictum of the Supreme Court. The rationale behind the Supreme Court judgment is that where an

employee receives any amount which is not attributable to any fraud or misrepresentation on his part and was paid due to an error of the employer, it would be iniquitous and unjust to recover the amount from the employee, especially in a case where hardship will be caused to the employee, if the recovery is ordered. Reliance was placed on the judgments in *Rajendra Singh v. Union of India and Ors.*, 2017 SCC OnLine Del 10235, *Mahanagar Telephone Nigam Ltd. v. Ramdhan Gupta and Another*, 2019 SCC OnLine Del 7125 and *Mahanagar Telephone Nigam Ltd. v. Sh. Satnam Singh and Anr.*, 2018 SCC OnLine Del 7323, for the same proposition.

Contentions on behalf of the Respondents:-

(A). Petitioners were extended certain facilities and reimbursements to maintain residential offices being Board Level officers as per functional requirements, keeping in view prevalent practices in other PSUs, with the approval of Board of Directors of STC w.e.f. 01.04.2005. Facilities were continued even after introduction of Cafeteria-based perks and allowances from 01.12.2008 pursuant to DPE Guidelines, which was subject to a maximum ceiling of 50% of Basic Pay. However, these expenses were discontinued w.e.f. 01.02.2016 in compliance of O.M. issued by Respondent No.2 on 21.01.2016, whereby Board of STC was directed to review and recover the said amounts.

(B). Respondent No.2 vide its letter dated 09.05.2017 conveyed its decision to recover excess/wrongful payments made towards perks and allowances to Senior Executives/Officers, both serving and retired of MMTC, STC and PEC as also to issue show-cause notices to enable them to make representations. It was in compliance with this direction of Respondent No. 2 that STC issued show-cause notices to the Petitioners and after representations were made, they were

forwarded to Respondent No.2 along with their comments requesting for waiver. However, DPE did not agree for waiver and STC, in furtherance of the direction issued by Respondent No. 2, vide letter dated 06.03.2018, issued demand notices dated 25.04.2018 to the Petitioners and thus no infirmity can be found with the action of STC. The writ petition is pre-mature since no final decision has been taken on the show-cause notices.

(C). Reliance by the Petitioners on the judgment in *Rafiq Masih (supra)* to the extent that no recoveries can be made is misplaced and overlooks that in the same very judgment, the Supreme Court has held that an action of a State ordering a recovery from an employee would be in order so long as it is not rendered iniquitous, unfair, improper or unwarranted or has a harsh and arbitrary effect on the employee.

(D). Petitioners cannot claim the benefit of the judgment also for the reason that being Board Level senior officers, they were aware of the proposals that were being moved from time to time for discontinuing the allowances and were also privy to the correspondence exchanged with Respondent No.2 from time to time, pointing out that excess payments were being made to these officials and yet they chose to receive these amounts over the years till their retirement.

Analysis:

8. It is an undisputed fact that the Respondents are seeking to recover, by the impugned demand letters, amounts paid towards monthly expenses on reimbursement of electricity/attendant charges, gardener allowance and entertainment expenses paid to the Petitioners for maintenance of their residence offices, introduced from 01.04.2005 and discontinued from 01.02.2016. Indisputably, the recoveries have been initiated post their retirements and the amounts have been received for a period in excess of 5 years.

9. In order to understand the genesis of the allowances and/or facilities/perks in question, the chronology of dates and events in the additional affidavit filed by STC on 17.04.2023 is useful, as this would also shed light on the decisions taken by the Board of Directors, from time to time. Board of Directors in the 534th Meeting held on 29.07.2005, approved certain facilities/allowances for senior officials of STC for maintaining offices at their residence from 01.04.2005. Perusal of Agenda Note for the Board shows that reimbursement of expenses for Directors and CMD towards furnishing of residential offices was approved by the earlier Board in the year 1989 and there had been no revision since then. In the meantime, MMTC, a sister concern of STC functioning under the umbrella of Respondent No.2, had with the approval of its Board of Directors enhanced certain perks/facilities for its employees. Since Government of India intimated that STC was out of the list of disinvestment, perks which were not increased over the years deserved to be revised. It is also noted that there was a substantial growth in the turnover of the company and it had attained a turnover of Rs.9,705 crores, posting a profit of Rs.30 crores. It is in this background and after furnishing the facts and figures that the matter was placed before the Board of Directors for approval to increase the perks/facilities of the senior officials. Beyond a doubt, the Board of Directors approved the Agenda as placed before the Board.

10. Significantly, by an O.M. dated 26.11.2008, pay scales were revised from 01.01.2007 and in respect of certain allowances and perks, it was provided that the Board of Directors will decide their admissibility to different categories of the Executives, subject to a maximum ceiling of 50% of the Basic Pay and these allowances were enumerated in para 10 of the O.M. There was, however, no mention of

the allowances or facilities introduced from 01.04.2005. Board of Directors in the 556th Meeting held on 28.04.2009 resolved to adopt pay scales, fitment benefits, etc. on the basis of DPE Guidelines, issued vide O.M. dated 26.11.2008 read with O.M. dated 02.04.2009, however, the decision taken on 29.07.2005 remained unchanged. Committee of Management in its meeting dated 07.12.2010 approved fixation of perks and allowances for Board Level and below Board Level Executives, however, *status quo* on the earlier allowances never changed.

11. Chronology in the affidavit indicates that the impugned recoveries were actually triggered by a complaint dated 29.08.2014 made by STC Officer's Association with regard to payment of perks and allowances beyond the ceiling of 50% of Basic Pay to the Senior Executives, which was forwarded by Respondent No.2 to STC. STC furnished its reply dated 18.11.2014 to Respondent No.2 bringing forth all benefits paid based on functional requirements, etc. beyond the Cafeteria-based perks and allowances and also mentioned that these facilities were for improving the working standard and performance of STC just like other CPSEs. Respondent No.2 did not accept the stand of STC and directed to discontinue the reimbursement of expenses w.e.f. 01.02.2016.

12. The crucial points that emerge from this narrative are that: (a) decision to enhance the perks/facilities provided to the Petitioners for maintenance of their official residences was a well thought of and deliberated decision approved by the Board of Directors; (b) decision was taken after deliberations on the facts and figures placed before the Board in a detailed Agenda; and (c) when the decision was taken to restrict the allowances and perks to a ceiling of 50% of the Basic Pay and/or when the circular was issued in 2010, the

earlier decision taken in the meeting held on 29.07.2005 remained unchanged. It was only for the first time that Respondent No.2 directed STC to discontinue the perks vide O.M. dated 21.01.2016, followed by the STC placing the matter before its Board of Directors in its 605th Meeting held on 28.05.2016. Importantly, the Board did consider and was of the view that it would be unfair to make recoveries from employees who had retired and therefore, the recoveries should be waived. Since DPE did not agree, the Board of Directors again considered the matter in 610th Meeting on 14.02.2017 and this process continued till finally Respondent No.2 by its letter dated 09.05.2017 directed STC to effect recoveries and issue the above show-cause notices/demand letters.

13. Therefore, it is not open to the Respondents to contend that the Petitioners were wrongfully receiving the alleged excess/wrongful payments or were privy to the decisions. The amounts were being reimbursed to the Petitioners pursuant to a conscious decision at the level of Board of Directors and continued to receive till their retirement as till then, there was no finality on the decision to recover. Far from the payments being attributed to any fraud or misrepresentation, this is a classic case where the STC itself was supporting the case of disbursement of the facilities/perks since they had not been revised since the year 1989. It is, thus, not a case where it can even be said that the payments were made by mistake or on account of an error and on this ground alone, in my view, the show-cause notices/demand letters deserve to be quashed.

14. There is another facet of the matter which is in favour of the Petitioners. Law on recovery of excess/wrongful payments is no longer *res integra*. In **Rafiq Masih (supra)**, the Supreme Court has held that even where payments have been mistakenly made by the

employer, in excess of the entitlement of the employees, they cannot be recovered, if made in excess of five years as that would be iniquitous and arbitrary, violating Article 14 of the Constitution of India. Reliance was placed on the judgment of the Supreme Court in ***Col. B.J. Akkara (Retd.) v. Government of India and Others, (2006) 11 SCC 709***, relevant paras of which are as follows:-

“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 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.”

15. Reliance was also placed on the judgment of the Supreme Court in ***Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475***, wherein the Supreme Court held as follows:-

“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 [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , 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] , Col. B.J. Akkara (Retd.) 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] .

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 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."*

16. Finally, the Supreme Court in **Rafiq Masih (supra)**, delineated a few situations where recoveries would be 'impermissible in law' while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery. Relevant paras are as follows:-

"13. First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir case [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] recognised, 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.

14. In this context, reference may also be made to the decision rendered by this Court in *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], wherein this Court observed as under: (SCC pp. 525-26, para 11)

“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. 1-1-1973 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 1-1-1973, 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.”

(emphasis supplied)

It is apparent, that in Shyam Babu Verma case [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], 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.

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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)

17. Therefore, under the binding dictum of the Supreme Court, recoveries are impermissible where they are sought to be made from retired employees and when the excess payment has been made for a period in excess of five years, prior to the issue of recovery order and, in my considered view, case of the Petitioners fits under both the heads.

18. The issue cropped up yet again before the Supreme Court in ***Thomas Daniel v. State of Kerala and Others, 2022 SCC OnLine SC 536*** and the Supreme Court held as under:-

“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*, 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 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.”

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14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.”

19. Subsequent thereto, a Division Bench of this Court in ***Ramdhan Gupta (supra)*** dismissed the writ petition filed by MTNL assailing the order passed by Central Administrative Tribunal, whereby the Tribunal had quashed the letter dated 26.12.2014, rejecting the employee's representation against recovery sought to be made against him four days before his superannuation of an amount alleged to be an over-payment on account of inadvertent grant of two annual increments, nearly 20 years ago. Reliance was placed on the judgment of ***Rafiq Masih (supra)*** and the Division Bench also ruled that the dictum of the Supreme Court was not limited to employees belonging to Classes III and IV or Group 'C' and 'D' and since the recovery was made short of the retirement and related to a period well in excess of five years, the action of MTNL was unjustified. To the same effect is the decision of the Division Bench in ***Satnam Singh (supra)*** where the issue pertained to recovery from employees post their superannuation from the gratuity payable to them on account of alleged over-payment of pay and allowances.

20. I may also, in this context, allude to another judgment of the Division Bench of this Court in ***T.N. Veeraraghavan v. Union of India and Another, 2018 SCC OnLine Del 12599***, where the Court quashed the recovery notices, initiated on account of grant of stagnation increments consecutively for three years, contrary to the DPE Guidelines. Recovery was sought to be done in the year 2016 in respect of increments granted for the period 2002-05 and the Court held that stagnation increments were granted on a misunderstanding of the relevant Office Memorandum and in absence of any fraud, misrepresentation or error on the part of the Appellants/employees, the recovery would be iniquitous and harsh.

21. From the facts emerging in the present case, it is palpably clear that the allowances sought to be recovered by the impugned demand letters were introduced from 01.04.2005 and were paid to the Petitioners till their respective dates of retirement and there is not even an allegation that Petitioners are responsible for any fraud or misrepresentation. Petitioners retired way back between 2011 to 2014 and are in receipt of retiral benefits. In my view, it would be wholly harsh, arbitrary and iniquitous on the Respondents if the Respondents are permitted to recover the amounts as sought to be recovered through the demand letters. The recovery is clearly barred in view of the judgment of the Supreme Court in *Rafiq Masih (supra)*.

22. In view of the aforesaid, the impugned demand letters dated 25.04.2018 and the preceding show-cause notices dated 27.06.2017, in respect of the Petitioners are quashed and set aside, with a direction that no recovery shall be effected from the Petitioners. It needs to be noted at this stage that during the pendency of the writ petition and despite the interim order of this Court, it is the case of the Petitioners that some amounts were deducted by the Respondents especially in the case of Petitioners No. 3 and 4. It is, therefore, directed that wherever deductions have been made, the amounts shall be refunded with interest @ 9% per annum from the date of recovery till the date of actual payment.

23. Writ petition is allowed and disposed of in the aforesaid terms. Pending applications are disposed of.

JYOTI SINGH, J

APRIL 25, 2023/kks/shivam