



2023 : DHC : 9199



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

% **Pronounced on: 20th December, 2023**

+ **W.P.(C) 829/2022**

DR. HS SHIVAPRAKASH

..... Petitioner

Through: Mr.Abhik Chimni, Mr.Saharsh
Saxena, Mr.Mukul Kulhari and
Mr.M.Bhardwaj, Advocates

versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Ms.Monica Arora, CGSC with
Mr.Yash Tyagi and
Mr.Subhrodeep Saha, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present petition has been filed under Article 226 of the Constitution of India seeking the following reliefs:

“a. To pass a writ of certiorari to quash the office corrigendum dated 09.07.2020

b. To pass a writ of certiorari to quash the order of recovery by way of email dated 30.08.2020

c. To pass a writ of mandamus to direct the Respondent University to deposit the amount of Rs. 2,79,612/- to the Petitioner at 12% interest from the date on which the Petitioner received leave encashment which has been illegally recovered from the Petitioner. AND/OR

d. To pass any order or direction in the interests of justice”



FACTUAL MATRIX

2. The respondent University is a public university which was established under an Act of Parliament i.e. Jawaharlal Nehru University Act, 1966. It is a statutory body and thereby amenable to writ jurisdiction.

3. In the year 2002, the petitioner was appointed as an Associate Professor with the respondent University in its School of Arts and Aesthetics *vide* office order No. 195 and therefore the petitioner joined the University at a basic pay of Rs.16,620/- p.m. in the pay scale of Rs. 1200-420-18300.

4. In the year 2007, the petitioner was promoted to the post of Professor and therefore, his salary was increased to pay scale of Rs. 16400-450-20900-500-22400 with effect from 16th May, 2007 and the petitioner was superannuated from the services on 30th June, 2019.

5. Pursuant to the retirement, the respondent University determined the superannuation benefits including commuted amount of GPF, leave encashment and retirement gratuity and the said amount was fixed at Rs. 14,96,768/-. After taking into account the length of service rendered by him to the respondent University, the petitioner's pay was re-fixed and the same was notified to him *vide* Office Order No. 124/2020 dated 30th June, 2020.

6. On 9th July, 2020, the respondent University issued office Order No. 127/2020 and a Corrigendum detailing the components of the retirement benefits due to the petitioner. The said Corrigendum to the Office Order bearing No. 124/2020, modified the dates of increment of





the petitioner as well as the monthly salary of the petitioner in the following manner:

Modified Date of Increment	Modified Pay
01.12.2002 (earlier 13.02.2002)	Rs. 12,420/- (earlier 16,620/-)
01.12.2003 (earlier 16.05.2004)	Rs. 12,840/- (earlier 18,200/-)

7. Pursuant to the said revision in the pay scale, the respondent University wrote an email dated 30th August, 2020, thereby, informing the petitioner about deduction of an amount of INR 8,79,612/- as recovery for excess of pay made prior to the revision of his pay scale.

8. The petitioner made several representations to the respondent University highlighting that his earlier service had not been taken into account during the fixation of pension and enquiring about the law/provision that formed the basis of modification in pay. However, no other reasons were provided by the respondent University for this retrospective modification of pay after 19 years.

9. Aggrieved, the petitioner filed the instant writ petition challenging the Corrigendum dated 9th July, 2020 and the email for recovery dated 30th August, 2020.

SUBMISSIONS

(on behalf of the petitioner)

10. The learned counsel appearing on behalf of the petitioner submitted that impugned orders dated 9th July, 2020 and 30th August, 2020 are unreasonable and issued contrary to the law laid by the Hon'ble Supreme



Court in *State of Punjab v. Rafiq Masih (White Washer)*, (2015) 4 SCC 334 wherein it was held that no recovery of money could be made from a retired employee.

11. It is submitted that as per the law laid in the abovementioned judgment, there is a bar on the recovery of excess payments which has been made for more than five years and the petitioner's case falls in the said category of the retired employee.

12. It is submitted that when an employee is allowed to draw excess amount due to no fault of his own, such amount cannot be adjusted against his retrial dues and therefore the recovery of Rs. 8,79,612/- is illegal and unjust.

13. It is submitted that the respondent University did not provide cogent reasons for recovering the amount of Rs 8,79,612/- in the impugned orders and the email dated 30th August, 2020 merely stated that the excess amount was deducted due to a downward revision of pay, however, no provisions in law or any office orders mandating such a recovery were mentioned in the said email.

14. It is submitted that there remains ambiguity in whether the wrongful re-fixation of pay would entitle the respondent University to Rs. 8,79,612/- and failure to provide a reasoned order for the said deduction or a response to the petitioner's representation is *malafide* in nature.

15. It is submitted that the respondent University has violated the principles of natural justice by not issuing a show cause notice before recovering the excess amount from the petitioner, therefore violating the principles of natural justice.



16. It is submitted that the respondent University could not recover any amounts given prejudices and hardships which would be caused to the petitioner which is against the law laid down in the *Rafiq Masih case (supra)*, whereby, it was held that authorities could not recover excess amounts paid by them to government employees due to unintentional mistakes in determining the emoluments payable to them when such a recovery could cause hardships to the employee.

17. It is further submitted that the act of arbitrarily re-fixing the petitioner's pay would lead to a severe financial crunch for the petitioner concerning his family obligations and other added and unforeseen expenditures.

18. Therefore, in light of the foregoing submissions, it is prayed that the present petition may be allowed and relief may be granted, as prayed.

(on behalf of the respondent)

19. *Per Contra*, learned counsel appearing on behalf of the respondent University vehemently opposes the submissions made by the learned counsel for the petitioner submitting to the effect that the petitioner's last drawn salary was "protected" on joining the respondent University, as a result of which his pay was fixed at a higher rate than he would have otherwise been entitled to.

20. It is submitted that the petitioner's pay protection was subject to the fact that the pro-rata pensionary benefits of the service rendered by him at his previous post under the Karnataka Government would be computed in the manner stipulated in the Central Civil Services (Pension) Rules, 1972 and remitted from the Karnataka Government to the respondent University.



21. It is submitted that despite this stipulation, the petitioner's remittances and gratuity were calculated in accordance with Karnataka Government's rules and not the CCS (Pension) Rules, 1972 and these amounts, as calculated by the Karnataka Government, were considerably lower than those admissible under the provisions of the CCS (Pension) Rules 1972.

22. It is submitted that the respondent University had no option but to re-fix the petitioner's pay at the minimum pay scale of an Associate Professor, i.e., at Rs. 12000/-, necessitating the recovery of excess payments made to him in the past. The learned counsel further submitted that the impugned order could only have been issued at the time of fixing remittances and thus the respondent University could not have issued the impugned order any earlier than it did.

23. It is submitted that leave encashment is not a part of retirement benefits, and therefore the petitioner did not include the same in Office Order No.127/2020 dated 9th July, 2020 and a separate office order is issued in all cases of leave encashment.

24. The learned counsel for the respondent further submitted that *vide* letter dated 16th February, 2020, the petitioner had agreed to fix the pension of the petitioner on the basis of his tenure at the respondent University, as it had not received his GPF contribution from his previous employer.

25. It is submitted that the petitioner had agreed to the arrangement that excess payments made by the respondent University to him could be recovered from his gratuity/leave encashment.



26. It is submitted that there was no duress on part of the respondent University and that the petitioner entered this undertaking of his own accord. The learned counsel submitted that the salaries and benefits of all employees are released on the basis of rules which apply equally to all. It is submitted that the respondent University merely applied the rules to its employees and that the petitioner did not need any bargaining power to interact with the university.

27. It is further submitted that the argument of duress was brought forth by the petitioner only in written submissions as an afterthought. It is submitted that the burden of proof to show that the respondent University exercised duress rests on the petitioner, and that such burden was not discharged.

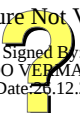
28. Hence, in view of the forgoing discussion, it is submitted on behalf of the respondent that the petition, being devoid of any merits is liable to be dismissed.

ANALYSIS AND FINDINGS

29. Heard the learned counsel for the parties and perused the record.

30. It is the case of the petitioner that the respondent University has illegally re-fixed his post retrospectively and therefore, the deduction made in the benefits accrued towards the petitioner is unlawful, and need to be quashed.

31. In light of the same, the issue before this Court is limited to the aspect of whether the respondent University illegally deducted the salary of the petitioner and if this Court and set aside the said decision in light of the settled position of law.





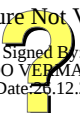
32. The issue of recovery of access amount from the retired employees has been extensively dealt with by the Hon'ble Supreme Court and this Court time and again, and therefore, the issue is more or less settled.

33. As per material on record, the seniority of the petitioner was re-fixed with a retrospective effect *vide* order dated 9th July, 2020 where the pay was reduced to Rs. 12,480. In his pleadings, the petitioner has vehemently argued for terming such an action illegal and submitted that the said reduction in salary after 20 years of his appointment does not hold in law.

34. A similar situation came up before the Hon'ble Supreme Court in the case of ***Shyam Babu Verma v. Union of India, (1994) 2 SCC 521***, where the petitioner's pay grade was re-fixed after 11 years. While analysing the situation, the Hon'ble Court had directed the respondent employer to not recover the excess amount as the petitioner was not at fault. The relevant paragraphs are reproduced herein:

“10. In the facts of present case there is no scope for applying the principle of ‘equal pay for equal work’ when the petitioners belong to a separate category of Pharmacists with reference to the qualifications prescribed under the Act. According to us, there is no element of arbitrariness in the decision of the respondents to implement two scales of pay for two categories of Pharmacists Grade-B. It does not violate any of the provisions of the Constitution calling for interference by this Court.

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



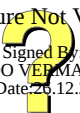


that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.”

35. The question of recovery of the excess amount given to an employee came up again before the Hon’ble Supreme Court in the case ***Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475***, whereby the Hon’ble Court termed the recovery without fault of an employee as illegal and directed the state of Bihar to refund the recovered amount. The relevant parts are reproduced herein:

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) 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.

*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. BijayBhadur [(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.

60. Learned counsel also submitted that prior to the interim order passed by this Court on 7-4-2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some instalments/amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.



61. In the result, the appeals are allowed in part; the impugned judgment so far as it relates to the direction given for recovery of the amount that has been paid in excess to the appellant teachers is set aside and that part of the impugned judgment whereby it has been held by the Division Bench that the amended provisions of FR 22-C would apply to the appellant teachers is upheld. We direct that no recovery of the excess amount, that has been paid to the teachers of secondary schools, be made, irrespective of the fact whether they have moved this Court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgment was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them within three months from the date of receipt of copy of this judgment.”

36. The similar issue was revisited by the Hon’ble Supreme Court in the case of *State of Punjab v. Rafiq Masih*, (2015) 4 SCC 334, whereby it was observed that certain metric for non-recovery of the excess amount and permitted the recovery from the employees not falling under the said metric. The relevant paragraphs of the case are as under:

“17. Last of all, reference may be made to the decision in Sahib Ram v. Union of India [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] wherein it was concluded as under: (SCC pp. 19-20, paras 4-5)

“4. Mr Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had

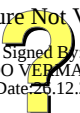


revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class MA, MSc, MCom plus a first or second class BLib Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

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.”

(emphasis supplied)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs 700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class MA, MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification). For those Librarians appointed prior to 3-12-1972, the educational qualifications were relaxed. In Sahib Ram case [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] , a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the appellants





concerned were ineligible for the same. The appellants concerned were held not eligible for the higher scale, by applying the principle of “equal pay for equal work”. This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

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.



19. We are informed by the learned counsel representing the appellant State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders [Rafiq Masih v. State of Punjab, CWP No. 16277 of 2010, decided on 17-1-2011 (P&H). Some of the other impugned orders may be referred to: Avinash Kumari v. State of Punjab, CWP No. 16398 of 2009, order dated 27-4-2010 (P&H); Labh Singh v. State of Punjab, CWP No. 823 of 2009, order dated 29-4-2010 (P&H); Sohan Lal v. State of Punjab, CWP No. 13377 of 2010, order dated 30-7-2010 (P&H); Karamjit Kaur v. State of Punjab, CWP No. 13450 of 2010, order dated 2-8-2010 (P&H); Karnail Singh v. State of Punjab, CWP No. 13335 of 2004, order dated 4-2-2010 (P&H); Ram Nath v. State of Punjab, CWP No. 15539 of 2010, order dated 31-8-2010 (P&H)] passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

37. Upon perusal of the above-cited judicial dictum, it is crystal clear that even though the Hon’ble Supreme Court had permitted the employers to recover the excess amount, the employees falling under certain categories were exempted from the same.

38. The said categories as mentioned in the ***Rafiq Masih*** (***supra***) case are as under:

- (i) the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) the employees where 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

39. In the present case, the material on record makes it evident that the petitioner falls in the categories exempted from any recovery. Firstly, the petitioner's recovery has been made since the initial year of his appointment, i.e. year 2001, which is beyond term permissible under the said metric, *secondly*, the petitioner's seniority was re-fixed when he was at the juncture of retirement therefore, making him eligible to take exemption under the said metric.

40. In light of the same, the amount deducted from the pensionary benefits accruing to the petitioner cannot be termed legal in any manner as the same contravenes the law laid down by the Hon'ble Supreme Court in the above cited ***Rafiq Masih (supra)*** case.

41. Additionally, it is crucial to highlight that the petitioner's contributions to the pension fund have been consistently and diligently made throughout his entire service tenure. The unilateral deduction from his pensionary benefits not only goes against established legal principles but also undermines the essence of the agreement between the petitioner and the employer.

42. Furthermore, it is pertinent to note that the petitioner's case bears a striking resemblance to precedent cases where the courts have



unequivocally ruled in favor of individuals similarly situated. This Court, in various instances, has emphasized the inviolable nature of pensionary rights and the need to safeguard the financial well-being of retired employees.

CONCLUSION

43. The arbitrary nature of the deductions becomes apparent when one considers the absence of any procedural fairness in the manner in which the recovery was initiated. The petitioner was not afforded a proper opportunity to present his case or contest the deductions, a clear violation of the principles of natural justice.

44. An examination of the settled position of law reveals a clear intent to shield individuals falling within specific exempt categories. The petitioner, having met the criteria for such exemption, should not bear the brunt of an erroneous recovery process that overlooks the legal safeguards in place.

45. Moreover, the retrospective nature of the recovery raises serious questions about its legality and ethicality. The petitioner, having retired with the legitimate expectation of receiving the full extent of his pensionary benefits, should not be subjected to a post-retirement financial burden that was not communicated or anticipated during his years of service.

46. Therefore, in light of the same, this Court deems it appropriate to issue the writ of certiorari, thereby, the Corrigendum dated 9th July, 2020 and the email for recovery dated 30th August, 2020 are set aside and the



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respondent University is directed to release the deducted amount to the petitioner expeditiously, and preferably within 12 weeks.

47. Accordingly, the instant petition stands disposed of along with pending applications, if any.

48. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 20, 2023
gs/av