



2024:DHC:3849



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

% Judgment delivered on: 08.05.2024

+ **W.P.(C) 2147/2024****MRS DR CHANDRA GOSWAMI**

..... Petitioner

versus

DYAL SINGH COLLEGE & ORS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Jyotika Kalra, Advocate.

For the Respondent : Mr. Hardik Rupal and Mr. Mohinder Jit Singh Rupal, Advocates for R-2.
Mr. Parmanand Gaur, Standing Counsel for UGC with Mr. Vibhav Mishra and Ms. Megha Gaur, Advocates for UGC (through VC).
Mr. Raghvendra Shukla, Senior Panel Counsel with Mr. Anil Devlal, G.P. for R-4 & 5.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G M E N T****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]****CM APPL. 8924/2024 (Exemption)**

1. Exemption is allowed subject to all just exceptions.
2. Application is disposed of.

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3. This is a writ petition under Article 226 of the Constitution of India, *inter alia*, seeking following reliefs:

“(a) direct the Respondents by way of appropriate writ, order or direction, to pay/reimburse the deducted amount of Rs, 3,82,192 along with the accrued interest at 12% per annum from the date of deduction to the date of actual payment to the Petitioner

(b) direct the Respondents by way of appropriate writ, order or direction, to pay a compensation of Rs. 50,000 to the Petitioner for causing avoidable inconvenience to the Petitioner.

(c) award cost of the Petition to the Petitioner.”

4. The petitioner states to have been promoted as a Lecturer/Reader in the pay scale of Rs.12000-420-18300/- w.e.f. 13.01.1998. On 27.07.2003, the pay fixation was carried out and her pay scale was increased to Rs.14,940/- w.e.f. 27.07.2003. On 26.05.2016, an internal audit was conducted where the consideration was in respect of some teachers which was refixed retrospectively w.e.f. 27.07.2003.

5. Following such internal audit, the respondent no.1 College on 13.06.2017 had issued a notice to the petitioner informing her that as per the internal audit report dated 26.05.2016, her pay has been incorrectly refixed w.e.f. 27.07.2003. Following that, simultaneously, the respondent no.1 also raised a demand of recovery of the alleged excess payment i.e. Rs.3,82,192/-.

6. The petitioner on 28.06.2017 represented to respondent no.1 that the pay fixation carried out was in accordance with the rules and regulations and was approved by the University of Delhi i.e. respondent



no.2 and as such, that amount is not recoverable. Since there was no response from respondent no.1, *vide* the letter dated 25.08.2017, the petitioner yet again requested respondent no.1 that her case should be reconsidered and had also challenged the observations of the internal audit committee.

7. The respondent no.3 *vide* Reference No.F.9-2/2015(DC) dated 21.11.2017, informed respondent no.2 that the waiver of recovery needs express approval of the Ministry of Finance in terms of DOPT O.M. 18.26.2011-Estt. (Pay-I) dated 06.02.2014.

8. The petitioner had superannuated from the services of respondent no.1 on 31.12.2017.

9. On 08.10.2021, the Governing Body of the college/respondent no.1 had considered the representation of the petitioner and after giving due deliberation had unanimously resolved to recommend the waiver of recovery of excess salary subject to the approval of the same by the Competent Authority. It is stated by the petitioner that *vide* the communication dated 17.01.2022, the respondent no.1 requested the respondent no.3/University Grants Commission that the recovery of the excess salary should be waived and the recovered amount should be reimbursed to the petitioner. *Vide* communication dated 20.06.2022, the respondent no.3, in fact, had requested the respondent no.2/Delhi University to consider the waiver of recovery by the Competent Authority i.e. the Ministry of Finance *vide* its letter dated 08.02.2022 and the prevailing rules and regulations.

10. Thereafter, the matter kept remaining pending constraining the petitioner to file a writ petition before this Court bearing W.P.(C)



15166/2023. *Vide* the order dated 23.11.2023, the petition was directed to be considered as a representation by the Principal of respondent no.1 to be disposed of within one week of the said order. *Vide* the order dated 11.01.2024, the Principal of respondent no.1 disposed of the representation by conveying to the petitioner that the college was awaiting the approval from the Department of Expenditure.

11. Finding no other redressal, the petitioner was constrained to file the present writ petition based on the judgment of Supreme Court in ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others***, reported in (2015) 4 SCC 334.

12. On, 14.02.2024 when the petition was listed for the first time, this Court after hearing the submission of Ms. Kalara, learned counsel for the petitioner, passed the following order:

“4. Ms. Jyotika Kalara, learned counsel appearing for the petitioner invites attention of this Court to the order dated 16.01.2024 passed by the Competent Authority of Dayal Singh College, whereby it is noted that the Governing Body (“GB”) of the College had resolved to waive off the recovery of excess payment subject to the express approval of the same by the University of Delhi/UGC/Competent Authority in this regard.

5. It is further submitted that the said issue was forwarded to the respondent no.5/ Department of Expenditure on 17th January, 2022. However, till date, there has been no response to the same. Even in the order dated 16.01.2024, the same is noted. According to Ms. Jyotika Kalra, it is only the respondent No.5/ Department of Expenditure which has to allow or approve the resolution carried out by the GB of the College.



6. Issue notice. Notice is accepted by learned counsel appearing for respondent nos.1, 2, 4 & 5.

7. None appears for respondent no.3. Issue notice to respondent no.3 by all permissible modes upon petitioner taking steps within a weeks.

8. Learned counsel appearing for respondent nos. 4 & 5 submits that he will obtain appropriate instructions with regard to status of the said request of approval to the resolution made by the respondent no.1.

9. The instructions be obtained.

10. List the matter on 14.03.2024 in the supplementary list.”

13. Today, learned counsel appearing for respondent nos.4 & 5 submits that a letter instructing him to submit to the Court that the said Ministry had asked the University/respondent no.2 to file its reply, has been conveyed.

14. It is observed by this Court that the respondent no.1 through its Governing Body had taken a conscious decision of seeking waiver as also for reimbursing the amount which had already been deducted on account of alleged “excess payment” and the approval according to the rules and regulations is to be accorded by the Ministry of Expenditure. It is also observed that the Ministry of Expenditure has not rendered any opinion nor has it accorded any approval. In such circumstance, this Court is of the considered opinion that the present petition alongwith its documents may be treated as a representation by the Competent Authority of the Ministry of Expenditure/Respondent nos.4 & 5 and dispose of in accordance with the extant rules and regulations and keeping in view the unanimous approval of the Governing Body of respondent no.1 as also bearing in mind the ratio laid down by the



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Supreme Court in *State of Punjab and Others vs. Rafiq Masih (White Washer)* (*supra*).

15. The petitioner shall be afforded an opportunity of hearing by the Competent Authority of the respondent nos.4 & 5. The petitioner shall also be entitled to submit further documents in support of her submissions, which shall be taken into consideration by the Competent Authority. The Competent Authority shall dispose of the representation within six weeks from today. The order shall be speaking and shall be furnished to the petitioner within one week of such disposal. Needless to state that the petitioner shall be at liberty to challenge the said order in case so required.

16. The present petition is disposed of in view of the above terms with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 8, 2024/kct