



2024:DHC:9437



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

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Date of Decision: 20th November, 2024

+ W.P.(C) 5724/2020 & CM APPL. 20683/2020, 28217/2020

PANKAJ KUMAR PRASADPetitioner

Through: Mr. Akshit Sachdeva, Advocate

versus

NATIONAL SEEDS CORPORATION LTD.Respondent

Through: Mr. Ghanshyam Joshi and Mr. Chirag Joshi, Advocates.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India challenging O.M. dated 13.11.2019 whereby the Respondent has annulled the upgradation of the then 05 General Managers and withdrawn the E-7 pay scale given to them, which includes the Petitioner, given earlier vide order dated 04.01.2011 and further directed that the Petitioner will deposit the recoverable amount on account of alleged illegal upgradation from E-6 to E-7 scale. Challenge is also laid to communication dated 13.01.2020 whereby Petitioner was asked to deposit an amount of Rs.9,28,143/-, recoverable from him, so that his terminal dues could be released.

2. It is the case of the Petitioner as set out in the writ petition that Petitioner joined the Respondent Corporation in 2008 as a General Manager and at that time, Respondent was a 'C' category Public Sector Undertaking.



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In the year 2010, Respondent contemplated its upgradation from 'C' category Public Sector Undertaking to 'B' category Public Sector Undertaking. In furtherance thereof, Respondent took steps and obtained approval of the Ministry of Agriculture i.e. its parent Ministry for being recognised as 'B' category PSU and to fulfil the necessary criteria, Respondent took initiative to: (a) upgrade pay scales of its Managing Directors from existing pay scale of Rs.65000-75000/- to Rs.75000-90000/- as per DPE O.M. dated 08.12.2013; (b) create 02 posts of functional Directors in the pay scale of Rs.65000-75000/-; and (c) upgrade the post of General Manager (GM) from existing E-6 level to E-7 level, applicable from the date of Notification of upgradation of the Corporation from 09.12.2010.

3. It is averred that the Respondent, after the approval of the Board of Directors in 235th Meeting and the Nodal Ministry vide letter dated 03.08.2010, upgraded the pay scale of GM from E-6 to E-7 level w.e.f. 09.12.2010, the date of upgradation of the Corporation from 'C' category to 'B' category. An Office Order dated 04.01.2011 was also issued in this regard wherein there was a reference to the Board Meeting and the Ministry Letter dated 13.08.2010 and it was also stated that consequent upon the upgradation, next upgradation will be due as per FR 23. As a 'B' category CPSE and consequent upon merger of another 'C' category CPSE under the same Ministry, Respondent redesignated the post of GM as Senior General Manager (SGM) w.e.f. 01.04.2014.

4. Petitioner states that in September, 2016, he applied for selection to the post of Managing Director in a 'C' category PSU NERAMAC. After approval of Appointment Committee of Cabinet, Petitioner was selected and applied for technical resignation and for being relieved to join the new post.



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Petitioner's request was accepted and he was relieved vide letter dated 30.09.2016. On 29.08.2019, Petitioner joined NAFED as Additional Managing Director and thereafter vide letter dated 13.09.2019 requested the Respondent to release his retiral benefits such as gratuity, leave encashment, balance of leave etc. Instead of releasing the benefits, Respondent issued an order dated 13.11.2019 asking the Petitioner to deposit the amount received by him allegedly due to illegal upgradation from E-6 to E-7 scale. Petitioner again sought release of retiral benefits by communication dated 04.12.2019 but in response Respondent while admitting that retiral dues were payable reiterated its demand vide communication dated 13.01.2020 to deposit the amount recoverable from the Petitioner.

5. Petitioner states that in a detailed reply dated 17.03.2020, he denied that he was illegally upgraded to E-7 scale as the upgradation was with the approval of the then CMD and the concerned Ministry and misrepresentation, if any, was by Sh. D.R. Sarin, the then GM (Adm.). He also pointed out that no recovery could be made after 09 years in view of the settled law on the subject. Finally getting no relief from the Respondent, Petitioner approached this Court.

6. Learned counsel for the Petitioner contends that Petitioner was upgraded from E-6 to E-7 scale pursuant to a decision taken by the Board of Directors of the Respondent in the 235th meeting held on 14.12.2010 and the agenda was a part of an initiative to upgrade the Respondent from a 'C' category to a 'B' category PSU. Board approved 03 agendas in the meeting and upgradation of posts of 05 GMs from E-6 to E-7 scale was one of the 03 agendas. It is pointed out that reading of Office Order dated 04.01.2011 issued by the Respondent shows that the decision of the Board of Directors



was after the approval from the Ministry of Agriculture granted vide letter dated 30.08.2010 and therefore, Respondent cannot take a stand that the upgradation was illegal. It is further argued that from order dated 13.11.2019, it is evident that the decision to annul the upgradation of the Petitioner and recover the payments drawn on account of revision in scale was taken based on an inquiry report rendered in an inquiry against Sh. D.R. Sarin, the then GM (Adm.) holding him responsible for the alleged illegal upgradation. This report cannot be the basis of an action against the Petitioner as neither any inquiry was held against the Petitioner nor even a show cause notice was issued asking him to explain that he was rightly granted the upgraded pay scale. Moreover, taken at its highest, the case of the Respondent is that Sh. D.R. Sarin was responsible for illegal upgradation and there is no allegation against the Petitioner even today that he had in any manner misrepresented or played fraud in getting the upgradation from E-6 to E-7 scale. There is no law which permits the Respondent to hold an inquiry against one employee and on that basis take an action against another employee who is not given a chance to explain his case.

7. Last but not the least, learned counsel argues that the case of the Petitioner is 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*, more particularly, paragraph 18 thereof, where the Supreme Court has held that while it is not possible to postulate all situations of hardship that would govern an employee on the issue of recovery but some instances can be summarised where recovery is impermissible in law and case of the Petitioner falls in clauses (iii) and (v) of paragraph 18, where excess payment has been made for a period in excess of 05 years before the order of



recovery is issued and where Court arrives at a 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 employer's right to recover.

8. Learned counsel for the Respondent, on the other hand, submits that the upgradation was illegally granted to the Petitioner as neither this was an agenda before the Board of Directors nor were they competent to upgrade the scales of GMs from E-6 to E-7 level. It is also argued that the Board of Directors and the Ministry of Agriculture were misled by one Sh. D.R. Sarin, who was working with Corporation as GM (Adm.) and was himself also the beneficiary of this upgradation. Disciplinary proceedings were initiated against Mr. Sarin which culminated into a penalty imposed upon him vide order dated 14.10.2019, which was never challenged by him. It is vehemently urged that the Supreme Court in *Rafiq Masih (supra)* in paragraphs 2 and 6 of the said judgment has held that merely because the employee is not guilty of any fraud or misrepresentation, he cannot contest the recovery of money unlawfully received by him.

9. Heard learned counsels appearing on behalf of the parties and examined their rival contentions.

10. It cannot be disputed by the Respondent that Petitioner was granted upgradation from E-6 to E-7 scale pursuant to 235th meeting of the Board of Directors held on 14.12.2010, as this is reflected from the minutes of the meeting placed on record by the Petitioner. Prior to the said meeting, Respondent had obtained approval from Ministry of Agriculture for upgradation of its status from 'C' category to 'B' category PSU. From the minutes it is also seen that Ministry vide orders dated 21.10.2010 and



09.12.2010 conveyed its approval for grant of Mini Ratna category-I status and upgradation of the Corporation from Schedule 'C' to Schedule 'B' CPSE. In furtherance thereof, the Board considered and approved 03 agendas which included upgradation of posts of 05 GMs from existing E-6 to E-7 level and relevant extract from the minutes is as follows:-

"EXTRACT FROM THE MINUTES OF THE 235TH MEETING OF THE BOARD OF DIRECTORS OF NSC HELD ON 14TH DECEMBER, 2010 AT 10:30 A.M. IN COMMITTEE ROOM, NSC, BEEJ BHAVAN, PUSA COMPLEX, NEW DELHI -110012

VII Up-gradation of pay scale of CMD from existing pay scale Rs. 65000-75000 to Rs.75000-90000

A proposal will be sent to the MOA for extending the pay scale of Rs.75000-90000 to the present CMD in pursuance of DPE OM No. 9(10)/92-GM-GL-5 l dated 8/12/2003

VIII. Up-gradation of the posts of five General Managers from existing E- 6 to E- 7 level and

Since the MOA has already approved the up-gradation of five posts of General Manager from E-6 to E-7, the pay scale of the existing GMs will be up-graded from E-6 to E- 7 from the date of notification of upgradation of the Corporation i.e. 9/12/2010.

IX Creation of two posts of functional directors in the pay scale of Rs.65000-75000.

Since the two posts of functional directors i.e. Director (Finance) and Director (Commercial), the draft Recruitment Rules of these two positions will be drafted and be sent to DPE/PSEB through Ministry of Agriculture for approval once the Recruitment Rule is approved these posts will be filled in by the PSEB as per the laid down procedure on the subject."

11. It is thus clear that upgradation from E-6 to E-7 level of posts of 05 GMs was an agenda before the Board and was also approved, contrary to the stand now taken by the Respondent and clearly this was not a sole agenda, which was approved and by Respondent's own stand, Petitioner had no role in either placing the agenda before the Board or in the approval granted by the Board of Directors. Pertinently, Office Order dated 04.01.2011 issued by the Respondent refers to a letter dated 30.08.2010 issued by the Ministry



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conferring upgradation from E-6 to E-7 level for 05 GMs. The Office Order fixes the revised pay of the Petitioner and records that the expenditure on account of salary and allowances will be debited to Account Corporate Office. Copy of this order is marked to AGM (Commercial) and DGM (Vigilance/Chief Vigilance Officer) and it was therefore in the knowledge of all concerned that upgradation had taken place with the approval of the Ministry and consequent pay fixation had been carried out. Significantly, this Office Order was followed by a communication dated 19.08.2014, whereby Petitioner's post was redesignated as SGM w.e.f. 01.04.2014 and even at that stage no issue was raised that the pay scale upgradation was illegal. Petitioner thereafter applied for taking up assignment of Managing Director NERAMAC and tendered his technical resignation. The resignation was accepted by the Respondent and Petitioner was relieved vide letter dated 30.09.2016 without any objection or rider and his name was struck off from the rolls of the Respondent. Even till this date, Respondent never raised any issue on the upgradation from E-6 to E-7 level as being illegal. In light of the documents aforementioned and the Minutes of the Board meeting, this Court is unable to accept the stand of the Respondent that the upgradation of the pay scale of the Petitioner from E-6 to E-7 scale did not have the approval of the Board of Directors of the Respondent or the Ministry.

12. Learned counsel for the Petitioner is also correct in his submission that impugned order of recovery has been issued against the Petitioner without holding any inquiry or even a show cause notice. From impugned order dated 13.11.2019, it is palpably clear that an inquiry was initiated against Sh. D.R. Sarin and it is this inquiry report which became the basis of recovery from the Petitioner. It cannot be countenanced that on the basis of



an inquiry against one employee, action is taken against the other and that too without even putting him to notice and calling upon him to explain his case and this becomes important since Respondent has been consistent in its stand that it was only Sh. D.R. Sarin who if at all, was responsible for the alleged irregularities.

13. Be it ingeminated that 03 facts emerge from a conjoint reading of the impugned orders, documents filed with the writ petition and the counter affidavit viz. (a) there are no allegations against the Petitioner even today that he had in any manner contributed to the upgradation of the pay scale from E-6 to E-7 level or played any fraud or misrepresented either to the Board of Directors or to the Ministry; (b) Petitioner's resignation was accepted without any pre-condition or rider; and (c) Petitioner indisputably performed his duties on the higher post with E-7 scale from the date of the upgradation in the pay scale till he resigned on 30.09.2016. It is also not in dispute that it is for the first time by letter dated 13.11.2019 that Respondent sought to recover a sum of Rs.9,28,143/- from the Petitioner on account of revised pay on upgradation and therefore, the recovery was in excess of 05 years before the order of recovery was issued. Petitioner's case thus clearly falls within the four corners of the law laid down by the Supreme Court in ***Rafiq Masih (supra)***.

14. Learned counsel for the Respondent has placed heavy reliance on paragraphs 2 and 6 of the judgment in ***Rafiq Masih (supra)*** to contend that if an employee is in receipt of monetary gains unlawfully, recovery can be effected and mere absence of misrepresentation/fraud is not enough for the Court to intervene. There can be no quarrel to this proposition laid down by the Supreme Court. However, learned counsel overlooks the other crucial



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observations of the Supreme Court in the same judgment, which when read, in my view, makes the recovery impermissible in law. Even in cases where payments were made mistakenly by the employer, in excess of entitlement of employees, the Supreme Court observed that it may not be possible to postulate all situations of hardship which would govern employees on the issue of recovery and illustratively summarised a few situations where recoveries would be impermissible and two of these eventualities are: (a) where excess payment has been made for a period in excess of 05 years before the order of recovery is issued; and (b) where the Court concludes that recovery would be iniquitous or harsh or arbitrary to such an extent that it would far outweigh the equitable balance of the employer's right to recover. The case of the Petitioner infact falls on a better footing on facts to the extent that the payment made to him was neither a mistake nor illegal. However, even assuming that excess payment was made, recovery cannot be made in excess of 05 years as is being done by the impugned order.

15. In this light, it is also important to allude to paragraph 13 of the judgment wherein the Supreme Court has referred to the judgment in *Syed Abdul Qadir and Others v. State of Bihar and Others*, (2009) 3 SCC 475, wherein it was held that even where there is an excess unauthorized payment but the same has been made for a long duration of time, it would be iniquitous to make the recovery. Interference because an action is iniquitous, must really be perceived as, interference because action is arbitrary and therefore in violation of Article 14 of the Constitution of India. Relevant paragraphs of the judgment in *Rafiq Masih (supra)* are as follows:-

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in



consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

9. *The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality can be found in Articles 14 to 18 contained in Part III of the Constitution of India, dealing with "fundamental rights". These articles of the Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracised section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39-A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "directive principles of State policy". These articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice—social, economic and political, by inter alia minimising monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.*

10. *In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.*



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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.

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16. This Court in Syed Abdul Qadir v. State of Bihar [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] held as follows : (SCC pp. 491-92, para 59)

“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. The 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.”

(emphasis supplied)

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir case [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] , that recovery of excess payments, made from the employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation.

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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."*

16. Therefore, in view of the judgment of the Supreme Court, no recovery can be made from the Petitioner and the impugned orders deserve to be set aside. There is another factor which weighs strongly in favour of the Petitioner against the impugned recovery. It is not disputed that the scale of the Petitioner in the post of GM was upgraded and fixed in the higher pay scale vide office order dated 04.01.2011 and Petitioner continued to draw the scale till he was relieved by the Respondent on 30.09.2016 and therefore continued to discharge the duties in the higher pay scale and therefore, in my view, it would be iniquitous and arbitrary for the Respondent to require the Petitioner to refund the wages of the higher post on which he had worked assuming for the sake of argument, erroneously. In taking this view, I draw strength from the binding dictum of the Supreme Court in the case of **Sahib Ram v. State of Haryana and Others, 1995 Supp (1) SCC 18**, which is referred to by the Supreme Court in **Rafiq Masih (supra)** in paragraph 17 of the judgment and I quote:-

"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



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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.”

17. Division Benches of this Court in ***Chairman, Delhi Transport Corporation v. Ramji Lal, 2023 SCC OnLine Del 2908*** and ***Mahanagar Telephone Nigam Limited (M.T.N.L.) through its Deputy Manager (P and A) v. Satya Narain Shahni, 2023 SCC OnLine Del 4819***, have quashed recovery orders in respect of overpayments applying the law laid down by the Supreme Court in ***Rafiq Masih (supra)***.

18. Accordingly, this writ petition is allowed. Impugned order dated 13.11.2019 and communication dated 13.01.2020 whereby Respondent has directed the Petitioner to deposit an amount of Rs.9,28,143/- as an alleged excess payment, are hereby quashed. Perusal of communication dated 13.01.2020 shows that Petitioner's terminal benefits such as gratuity and leave encashment have been withheld only on account of the recovery sought to be made by the Respondent. It is thus directed that the terminal benefits due to the Petitioner shall be released by the Respondent as expeditiously as possible and not later than 02 months.

19. Writ petition along with pending applications stand disposed of.

JYOTI SINGH, J

NOVEMBER 20, 2024/shivam