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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ W.P.(C) 6966/2024, CM APPL. 29019/2024-Stay, CM APPL.  
29020/2024-Exp  
UNION OF INDIA THROUGH SECRETARY & ORS. ... Petitioners  
Through: Mr. Abhishek Amritanshu, Sr. SC  
with Mr. S. N. Verma and Mr. Uttam  
Singh, Advocates with Ms. Rajni  
Shah, Law Officer

versus

PRABIR JANA & ORS. .... Respondents  
Through: Mr. Ankur Chhibber with Mr. Nikunj  
Arora, Advocates

**CORAM:**  
**HON'BLE MS. JUSTICE REKHA PALLI**  
**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**ORDER**  
**15.05.2024**

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1. The present petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 21.11.2023 passed by the learned Central Administrative Tribunal (the learned Tribunal) in O.A. No. 527/2023. Vide the impugned order, the learned Tribunal has set aside the order passed by the petitioner wherein they had sought to make recovery from the respondents on account of the excess payment made to them between 01.09.2008 to 19.06.2018 towards 'pick and drop' allowance.
2. From a perusal of the impugned order, we find that the learned Tribunal has allowed the OA, after taking into account the admitted position that the payment towards 'pick and drop' allowance was made voluntarily by the petitioners without any misrepresentation having been made by the



respondents. The learned Tribunal was, therefore, of the view that in the light of the decision of the Apex Court in “***State of Punjab And Others v/s Rafiq Masih (White Washer) And Others***” AIR 2015 SC 696, this amount paid to the respondents could not be recovered.

3. Before us, learned counsel for the petitioners while not denying that the decision in ***Rafiq Masih (Supra)*** is squarely applicable to the facts of the present case, submits that this amount was paid to the respondents without the approval of the Ministry of Finance. He, therefore, contends that unless the necessary approval is obtained from the Ministry, the petitioners have no other option but to recover the said amount from the respondents.

4. Per contra, learned counsel for the respondents supports the impugned order and submits that once it is admitted by the petitioners that there was no misrepresentation by the respondents, they are in the light of the decision in ***Rafiq Masih (Supra)*** estopped from seeking to make any recoveries from the respondents. He therefore prays that the writ petition be dismissed.

5. Having considered the submissions of the parties and perused the record, we begin by noting the relevant extracts of the impugned judgement as contained in paragraphs 8 and 9 thereof. The same read as under-

*“8. The benefits have been extended to the applicants in pursuance of a decision taken by the Board of Governors dwell within the powers vested in them by the NIFT Act. It is not in dispute that the Board of Governors were vested within these powers. They may have exceeded the same. However, the applicants have no way contributed, to this decision. There is nothing on record to establish that the applicants have influenced the BOG in taking the decision extending these benefits to them. There is no act of commission or omission at their end. Once the irregularity, if any, was pointed out by the CAG, the same has been*



withdrawn. They have been in receipt of the amount by virtue of the decision taken by the Board of Governors and they have also accepted to a situation that they are not entitled to the same by virtue of the CAG Audit and decision taken by the Nodal Ministry. The issue is only with respect to the period for which they have already received the said amount. In my considered opinion, the applicants cannot be held responsible for the said act. Additionally, the recovery is for a period from 2008 to 2018, i.e. prior to 5 years, it was received by the applicants. We are guided by a judgment of the Hon'ble Apex Court in the case of State of Punjab And Others v/s Rafiq Masih (White Washer) And Others (supra). Para 18 of the said judgment is reproduced hereinbelow:-

“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 that 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.”

9. In terms of clause-(iii) of para 18 as reproduced



*hereinabove, it is seen that the recovery of the excess amount is for the period almost five years and, therefore, the same cannot be allowed.”*

6. From a perusal of the aforesaid, it is evident that the Tribunal has allowed the OA by noticing that the purported payments towards ‘pick and drop’ allowance were made to the respondents for over 10 years on the basis of a decision taken by the Board of Governors of the petitioner no. 2 itself. The Tribunal was, therefore, of the opinion that once there was no misrepresentation by the respondents, the recovery of the said amount was impermissible, for which purpose, the Tribunal relied on **Rafiq Masih (Supra)**.

7. Before us, learned counsel for the petitioner despite vehemently contending that the petitioner was entitled to recover this amount as the same had been paid without approval by the Ministry of Finance, has not been able to deny that the decision in **Rafiq Masif (Supra)** is squarely applicable to the facts of the present case. His only plea being that these payments could not have been made merely on the basis of a decision taken by the Board of Governors of petitioner no.2. Even if we were to accept this plea of the petitioner that the payment towards ‘pick and drop’ allowance could not have been made without approval of the Ministry of Finance, the fact remains that payments towards this allowance were made to the respondents for over 10 years and that too without any misrepresentation having been made by them.

8. In the light of the aforesaid factual matrix, we concur with the Tribunal that the recovery of this purported overpayment made to the respondents was hit by the ratio of the decision in **Rafiq Masif (Supra)**. We,



therefore, find no infirmity with the impugned order. The writ petition being meritless is, along with the accompanying applications, dismissed.

**REKHA PALLI, J**

**SAURABH BANERJEE, J**

**MAY 15, 2024/akr**