



2024:DHC:9087-DB



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

+ **W.P.(C) 14959/2024, CM APPLs. 62764/2024 & 62765/2024**

**UNION OF INDIA THROUGH THE GENERAL
MANAGER & ORS.**

.....Petitioners

Through: Mr. Himanshu Pathak, SPC
with Mr. Amit Singh, Advocate

versus

SHRI DEEP CHANDRA TIWARI

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)
18.11.2024

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C.HARI SHANKAR, J.

1. This case is squarely covered by the judgment of the Supreme Court in *State of Punjab v Rafiq Masih*¹, which stands reiterated in *Thomas Daniel v State of Kerala*².

2. We, in fact, find that several cases which are squarely covered by the decision in *Rafiq Masih* are being carried to this Court, challenging orders passed by the Central Administrative Tribunal³. We see no reason why, in covered matters, this Court is being burdened with having to spend valuable time and energy in dealing

¹ (2015) 4 SCC 334

² 2022 SCC OnLine SC 536

³ "the Tribunal", hereinafter



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with fresh petitions. For the present, we leave it at that.

3. The respondent was appointed as TCI-III in the Northern Railways. During his career, he earned four promotions. He superannuated on 31 March 2020.

4. Prior to the respondent's superannuation, the Railways prepared a detailed history sheet of the respondent. The accounts branch of the Railways approved the scale of pay of ₹ 1,04,400/- as the last pay drawn by the respondent at the time of his superannuation and forwarded the approval to the concerned authorities for payment of retiral dues. The said authorities in the office of the Railways, however, by order dated 14 April 2020, re-fixed the last pay drawn by the respondent from ₹ 1,04,400/- to ₹ 87,400/-. Consequent thereto, the Railways wrote to the respondent on 4 February 2021, requiring the respondent to refund an amount of ₹ 15,50,664/- so that his retiral benefits could be paid. The respondent was also directed to deposit ₹ 53,669/- for finalisation of his leave encashment and other retiral benefits.

5. Aggrieved thereby, the respondent submitted a representation to the Railways on 1 June 2020, seeking re-fixation of his pay as ₹ 1,04,400/-. A reminder was also sent on 1 July 2020. The Railways did not respond. The respondent, thereupon, approached the Tribunal by way of OA 1053/2021, seeking a direction to the Tribunal to refund the amount of ₹ 15,50,664/- illegally deducted by the Railways



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from the Death-cum-Retirement Gratuity⁴ of the respondent with interest and to pay arrears of difference of DCRG, leave encashment and full and final pension with interest from the date these amounts became due.

6. The Tribunal has, by the judgment dated 1 February 2024 under challenge, allowed the respondent's OA following, in the process, the decisions in ***Rafiq Masih*** and ***Thomas Daniel***.

7. The Tribunal noted that, in the counter affidavit, the Railways had sought to contend that the respondent had obtained upward fixation of his pay, in contravention of the law, by colluding with the Railway officials. The argument was, however, unequivocally rejected, observing that no details of the officers with whom the respondent had allegedly colluded were disclosed in the counter affidavit. The Tribunal held that the recovery from the respondent was clearly in the teeth of the law enunciated in ***Rafiq Masih***, which prohibited recoveries of alleged over payments from retired employees or in cases where the recovery order was issued more than five years from the alleged over payment.

8. The recovery from the respondent, it was observed, was contrary to both these stipulations in ***Rafiq Masih***, which were reiterated in ***Thomas Daniel***.

9. We have heard Mr. Himanshu Pathak, learned Senior Panel

⁴ "DCRG", hereinafter



Counsel appearing for the petitioners at some length.

10. The view adopted by the Tribunal is clearly unexceptionable.

11. Mr. Himanshu Pathak is unable to point out any error in the judgment of the Tribunal. The case is clearly covered by the decision in *Rafiq Masih* and *Thomas Danial*. *Rafiq Masih* enumerated, in para 18, five circumstances in which recovery was impermissible, thus:

“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.”

12. The recovery from the respondent was impermissible, as the



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respondent had retired before the order of recovery was passed as well as because the recovery pertained to a period of more than five years anterior to the order of recovery.

13. Mr. Himanshu Pathak, in these circumstances, prays that liberty may at least be reserved with the Railways to, if the law so permits, take steps to re-fix the erroneously fixed pay scale of the respondent.

14. We make it clear that we do not approve the re-fixation of the pay scale of the respondent as it has been carried out by the Railways, without any prior notice. Downward fixation of pay has necessarily to be preceded by strict compliance with the principles of natural justice and after following the prescribed procedure in that regard.

15. In the circumstances, we see no reason to interfere with the impugned judgment dated 1 February 2024 passed by the learned Tribunal, save and except to the extent that if the law permits the petitioner to reduce the scale of the respondent on the ground that it was erroneously granted, the petitioner would be at liberty to proceed in that regard in accordance with law. We do not express any opinion on whether it is permissible. In the event that any such action is attempted, the rights of the respondent to contest the proceedings would also remain open.

16. We make it clear that even if any such reduction is proposed, it can be only be proposed prospectively and not retrospectively.

17. Accordingly, we clarify that save and except to the above

Signature Not Verified

Digitally Signed By: AWP(C) 14959/2024

KUMAR

Signing Date: 25.11.2024

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limited extent to which liberty is reserved, the judgment of the Tribunal is upheld and it is required to be implemented within a period of four weeks from today.

18. The petition is accordingly disposed of.

C.HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 18, 2024/yg/aky

Click here to check corrigendum, if any