



2024:DHC:6256



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

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*Date of Decision: 26<sup>th</sup> July, 2024*

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W.P.(C) 5508/2018, CM APPLs. 21455/2018 and 43326/2018

SARITA BAKSHI

.....Petitioner

Through: Mr. Amish Tandon and Ms. Anushree Kulkarni, Advocates

versus

DELHI UNIVERSITY &amp; ANR

.....Respondents

Through: Mr. Santosh Kumar and Ms. Nidhi Rani, Advocates for R-1.

Mr. R. Dhawan and Mr. B.S. Rana, Advocates for R-2.

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

1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India seeking the following reliefs:-

*“A. Issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing:*

*(i) the 1<sup>st</sup> impugned letter bearing Ref No. /Fin/Pen.Cell/2016/F-76 dated 19.08.2016 issued by Respondent No. 1 to Respondent No. 2;*

*(ii) the 2<sup>nd</sup> impugned letter bearing Ref No. CS-SDC/111/SAC/2016/1073 dated 06.12.2016 issued by Respondent No. 1 to Respondent No. 2;*

*(iii) the 3<sup>rd</sup> impugned letter bearing Ref No. SAC/2017/ 4158 dated 17.01.2017 issued by Respondent No. 2 to the Petitioner; and*



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(iv) the 4<sup>th</sup> impugned letter dated Ref. No. SAC/2017/4474 dated 7.6.2017 issued by Respondent No. 2 to the Petitioner;

AND

B. Issue a writ of Mandamus or any other appropriate writ, order or direction directing the Respondents to:

(i) pay the Petitioner the arrears of her pension calculated with effect from 31.07.2016 till date along with interest at the rate of 18% per annum.

(ii) Continue to make payments of Pension to the Petitioner at the above mentioned rates.

C. Pass such other and further orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the present case."

2. Brief facts to the extent relevant are that Petitioner joined as a Lecturer in Maitreyi College, affiliated to the Delhi University/Respondent No.1 in the year 1977 and was thereafter teaching in various colleges from time to time. On 10.01.1990, Petitioner joined Sri Aurobindo College/Respondent No.2 as a Lecturer and was promoted as a Reader w.e.f. 01.09.1996. During her employment with Respondent No.2, Ministry of Human Resource Development, Government of India (MHRD) vide letter dated 27.07.1998 revised the pay scales of employees of the University and the colleges pursuant to recommendations of 5<sup>th</sup> CPC and accordingly modified the existing scheme. MHRD subsequently issued clarifications in connection with pay fixation of Readers/Lecturers (Selection Grade) vide letter dated 06.11.1999 as follows:-

*"Fixation of pay scales of Lecturers (Selection Grade)/Readers in the Pre-revised scale of Rs. 3700 - 125 - 4950 - 150 - 5700/- who were selected strictly in accordance with the rules and regulations framed by the UGC and who were in position as lecturers (Selection Grade)/Readers as on 01.01.1996, will be made in a manner that they get their pay fixed at the minimum of Rs. 14, 940/- in the revised scales of Rs. 12, 000 - 420 - 18, 300 as and when they complete five years in the grade."*



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3. It is averred by the Petitioner that in light of the MHRD letter dated 27.07.1998 and clarification dated 06.11.1999, Respondents stepped up the pay of the Petitioner in a manner that her pay was fixed at minimum of Rs.14,940/- in the revised pay scale of Rs.12,000-18,300 on completion of five years in the Reader's grade. Petitioner retired on superannuation from the post of Associate Professor on 31.07.2016 and became entitled to pension, calculated on the basis of her last drawn salary as on 31.07.2016, as per applicable Rules. On 19.08.2016, i.e., almost 20 years post the letters of the MHRD, Respondent No.1 issued the impugned letter dated 19.08.2016 stating that since Petitioner was not in position as a Reader as on 01.01.1996, her pay was not required to be stepped up to Rs. 14,940/- on completion of five years of service in the Reader grade w.e.f. 01.09.2001 and in this view sought to refix her pay w.e.f. 01.09.2001 and recover the alleged over payment of pay and allowances, with suitable entry in the service book. By letter dated 06.12.2016, Respondent No.2 was granted approval for refixation of the pay of the Petitioner in the pay scale of Rs.12,000-18,300 at Rs. 14,100/- w.e.f. 01.09.2001 under 5<sup>th</sup> CPC and at Rs. 39,690/- w.e.f. 01.01.2006 with Academic Grade Pay Rs. 9,000/- on next date of increment i.e., 01.07.2006 under 6<sup>th</sup> CPC. Respondent No.2 vide letter dated 17.01.2017 informed the Petitioner of the refixation and the recovery.

4. On receipt of the impugned letters, Petitioner gave a detailed representation to the Respondents on 08.02.2017, pointing out that their action of refixation and recovery was erroneous and that assuming that the Respondents were correct, the stepping up was without any involvement of and fraud or misrepresentation by the Petitioner and therefore the huge



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recovery of Rs.4,28,006/- should not be made. The representation was followed by several reminders and legal notice but the impugned letters were not withdrawn. In the meantime, Petitioner sought information from other colleges under Right to Information Act, 2005 with respect to pay fixed for Readers on completion of five years who came in the pay scale Rs.12,000-18,300 after 01.01.1996 as also if there were any recoveries and as per the Petitioner, she learnt that this benefit had been given to similarly placed Readers. As the Respondents persisted in their stand, Petitioner approached this Court having no other option.

5. Learned counsel for the Petitioner submits that the impugned action of the refixation and recovery is erroneous and against the letter and spirit of the MHRD letters. At the relevant time, Respondents had themselves interpreted the letters to mean that those who were already working as Readers on 01.01.1996 would get a step up in their pay to Rs. 14,940/- after completion of five years of service as Reader and so would all others who were promoted on 01.01.1996 or thereafter. The only criteria for stepping up was that the employee should have served as a Reader for five years. However, contrary to their own understanding, after almost two decades Respondents have taken a new stand. Reliance on the clarificatory letter of MHRD dated 06.11.1999 is misplaced inasmuch as the clarification is silent about fixation of pay for those who were promoted as Readers on or after 01.01.1996 and nowhere states that stepping up would be applicable only to those who were in position as Readers on 01.01.1996 and not to the others.

6. Without prejudice to the aforesaid contention, it is argued that in any case no recovery can be made of the alleged overpaid amount after nearly two decades in view of the judgment of the Supreme Court in *State of*



***Punjab and Others v. Rafiq Masih, (2015) 4 SCC 334***, wherein the Supreme Court has illustratively delineated categories/situations wherein recoveries by employers would be impermissible in law and the Petitioner falls under categories (ii) and (iii) of paragraph 18 of the judgment.

7. Learned counsel for Respondent No.1 *per contra* submits that Petitioner completed five years of service as Reader on 01.09.2001 and approached the college for benefit of stepping up of her pay. The clarification given by the MHRD vide letter dated 06.11.1999 was misread to mean that those lecturers who were promoted as Readers after 01.01.2001 will be given the benefit of stepping up of the pay to a minimum of Rs. 14,940/-, on completion of five years' service in Reader's grade. It was on this erroneous interpretation that pay of the Petitioner was stepped up by the college after approval by Respondent No.1. Petitioner retired on 31.07.2016 and her case was processed for pension. It is at this stage that the error was detected that Petitioner was not entitled to the stepping up and refixation and recovery orders were passed. In fact, the benefit of stepping up of the minimum pay was available only to those who had been promoted as Readers/Senior Lecturers prior to 01.01.1996 and not to those who were promoted post the said cut-off date and therefore no fault can be found with the impugned action.

8. It is further contended that the Petitioner knew or at least ought to have known that the excess payment was being received by her, over and above her entitlement and therefore she is not entitled to the benefit of the judgment of the Supreme Court in ***Rafiq Masih (supra)***. Moreover, the recovery will not be iniquitous to the Petitioner inasmuch as she has received a huge amount of Rs.1,48,13,921/- from the college under various



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heads on retirement.

9. Heard learned counsels for the parties and examined their rival submissions.

10. The factual matrix emerging is that Petitioner joined the Delhi University in 1977 as a Lecturer and worked in different colleges and lastly with Respondent No.2 where she was promoted as a Reader on 01.09.1996 and wherefrom she superannuated on 31.07.2016. The case of the Petitioner is that MHRD issued a letter on 27.07.1998 considering the revision of pay scales of University and College Teachers in the Central Universities and this was followed by a clarification on 06.11.1999. On the basis of these letters, Respondents stepped up the pay of the Petitioner to bring it at a minimum of Rs. 14,940/- per month w.e.f. 01.09.2001 vide letter dated 10.01.2002 as she had completed five years service in the Reader grade. Admittedly, till the date of Petitioner's retirement from the post of Associate Professor, no objection was raised by the Respondents with respect to the stepping up and it was only post her superannuation that the impugned letters were issued refixing her minimum pay at Rs. 14,100/- w.e.f. 01.09.2001 in the pay scale of Rs.12,000-18,300 and seeking recovery of Rs.4,28,006/-.

11. It is undisputed that the minimum pay of the Petitioner was fixed at Rs. 14,940/- w.e.f. 01.09.2001 vide University's letter dated 10.01.2002 and she continued to draw this pay till 2016 uninterruptedly. In **Rafiq Masih (supra)**, the Supreme Court was adjudicating the issue as to whether the Respondents against whom an order of recovery of the excess amount had been made, should be exempted in law, from the reimbursement of the same to the employer. Observing that it was 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 employers in excess of their entitlement, the Supreme Court summarised a few situations where recoveries by employers would be impermissible in law. The illustrative categories are as follows:

*“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 Supreme Court further observed as under:-

*“7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even*



*in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, “for doing complete justice in any cause” would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.*

*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 aforesaid 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.”*

13. In the context of the present case, it would be relevant to allude to the observations of the Supreme Court in ***Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475***, to which reference is made by the Supreme Court in ***Rafiq Masih (supra)*** and relevant paragraphs are as follows:

*“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. Bijay Bhadur [(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.”*

14. In **Rafiq Masih (supra)**, the Supreme Court referred to and relied on two earlier judgments of the Supreme Court, which would be relevant to highlight. In **Shyam Babu Verma and Others v. Union of India and Others, (1994) 2 SCC 521**, the Supreme Court held as follows:

*“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.”*

15. In **Col. B.J. Akkara (Retd.) v. Government of India and Others, (2006) 11 SCC 709**, the Supreme Court observed as under:-

*“28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial*



*discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”*

16. From a reading of the judgment of the Supreme Court in **Rafiq Masih** (*supra*), this Court finds merit in the contention of the Petitioner that her case is squarely covered by the said judgment as she falls in category (ii) i.e., ‘recovery from a retired employee’ as also in category (iii) i.e., ‘recovery from the employees, when the excess payments has been made for a period in excess of five years, before the order of recovery is issued’, inasmuch as the impugned recovery was initiated post the retirement of the Petitioner and the allegedly excess payments were made to her w.e.f. 01.09.2001 and are in excess of five years before the order of recovery was issued.

17. Learned counsel for the University sought to oppose the petition on the ground that Petitioner knew or ought to have known that she was receiving payment in excess of her entitlement as she was not a Reader as on 01.01.1996 and the MHRD letters envisaged the stepping up of pay to a minimum of Rs.14,940/- in case of those Readers/Lecturers (Selection Grade), who were in position as on 01.01.1996 but did not have five years of service in the grade, on completion of five years of service in the grade. In my view, this contention is wholly misplaced and factually incorrect inasmuch as the college in its counter affidavit filed before this Court has clearly stated that MHRD vide its letter dated 27.07.1998, on recommendations of the University Grants Commission, decided to revise the pay scales of Teachers in the Central Universities. MHRD subsequently clarified vide letter dated 06.11.1999 that fixation of pay of Lecturers (Selection Grade)/Readers in the pre-revised scale of Rs. 3700-5700, who



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were selected strictly in accordance with Rules and Regulations framed by the UGC and who were in position as on 01.01.1996, will be made in a manner that their pay is fixed at the minimum of Rs. 14,940/- in the revised scale of Rs.12,000-18,300, as and when they complete five years in the grade. Petitioner was promoted as a Reader on 01.09.1996 and with the approval of the University her pay was fixed in the revised scale of Rs.12,000-18,300. She completed five years as a Reader on 01.09.2001 and on a misreading/misinterpretation of the MHRD letter dated 06.11.1999, her pay was stepped up. It is thus evident that the Respondents admit that they had misread the letters and granted the benefit to the Petitioner. While the Petitioner refutes that there was an erroneous fixation or excess payment and cites examples of Readers in other colleges who were granted the same stepping up, however, this Court without prejudice to the said contention, is unable to agree with the Respondents that the Petitioner had knowledge of the alleged excess payment, when their own understanding was that the stepping up was permissible.

18. A similar situation had arisen before the Supreme Court in *Syed Abdul Qadir (supra)* and the Supreme Court observed in paragraph 58 that 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 caused, if recovery was ordered. The observations in paragraph 59 are significant, where the Supreme Court observed that the excess amount paid to the Teachers was not because of any misrepresentation or fraud on their part and the Appellants therein had no knowledge that the amount that was being paid was more than what they were entitled to. To come to this conclusion the Supreme Court referred to



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the counter affidavit of the Finance Department, wherein it was admitted that it was a *bona fide* mistake on their part and the excess payment was made as a result of wrong interpretation of the applicable Rule and thus the Appellants could not be held responsible. In the present case also as noted above, the college has candidly stated that the stepping up in the case of the Petitioner was on a misreading/misinterpretation of the MHRD letters. Nothing has been placed on record by the Respondents which would even remotely indicate that in the long period of nearly two decades, Petitioner had any knowledge that her pay was allegedly erroneously stepped up. It would be wholly iniquitous in the present circumstances to permit the Respondents to refix the pay from 01.09.2001 and uphold the order of recovery. It needs to be noted here that when the writ petition was listed for admission on 22.05.2018, the Court had directed the Respondents to release the pensionary benefits to the Petitioner after adjusting the outstanding amount sought to be recovered, after approval from the University and the Court is apprised that an amount of Rs.4,28,006/- stands adjusted.

19. In view of the aforesaid, the writ petition is allowed, quashing the impugned letters dated 19.08.2016, 06.12.2016, 17.01.2017 and 07.06.2017, holding that Respondents are not entitled to recover a sum of Rs.4,28,006/- from the Petitioner. The said amount shall be refunded to the Petitioner within two months from today with interest @ 8% per annum from 19.08.2016 till the date of refund.

20. Petition stands disposed of in the aforesaid terms along with pending applications.

**JYOTI SINGH, J**

**JULY 26, 2024/kks**