



2024:DHC:10138-DB



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

+ W.P.(C) 1603/2017, CM APPL. 7221/2017

UNION OF INDIA & ORS

.....Petitioners

Through: Mr. Ruchir Mishra, Mr.
Mukesh Kr. Tiwari, Ms. Reba Jena Mishra
and Ms. Harshita Sharma, Advocates for
UIO

versus

NISHA JL

.....Respondent

Through: Mr. Padma Kumar S. and
Mr. Gurpreet Singh, Advs.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****ORDER (ORAL)**

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17.12.2024**C. HARI SHANKAR, J.**

1. The respondent was appointed as Lower Division Clerk with the petitioners, and promoted as Upper Division Clerk in May 1992. She remained on sanctioned Extra Ordinary Leave from 5 December 2005 to 20 April 2007. During the said period, four of her colleagues were promoted as Assistant. The respondent represented for refixation of her pay. In September 2010, the respondent's pay was refixed, whereby she would draw ₹ 13860/- as on 1 January 2006, ₹ 14420/- as on 1 July 2006 and ₹ 15580/- as on 1 July 2008. She was also held entitled to arrears.

2. Subsequently, however, the petitioners, *vide* order dated 9/10 May

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2013, reduced the pay of the respondent, as thus fixed, to ₹ 10230/- as on 1 January 2006 with the next increment on 1 July 2008, on which date her basic pay was refixed @ ₹ 10680 + 4600, i.e. ₹ 15280/-. Recovery of the amounts paid to the respondent in excess was also directed.

3. The respondent represented against the above refixation of her pay on 15 May 2013 and 20 May 2013, but without success. She, thereupon, moved the Central Administrative Tribunal¹ by way of OA 2633/2013, in which the presently impugned order has come to be passed.

4. The Tribunal has, in the impugned order dated 13 August 2015, held the refixation of the respondent's pay to have been in order and has, therefore, declined to interfere therewith. However, the recovery of the excess payment made to her has been found to infract the judgement of the Supreme Court in *State of Punjab v Rafiq Masih*² and has, therefore, been quashed.

5. Aggrieved thereby, the Union of India, as the respondent before the Tribunal, has approached this Court, by means of the present writ petition.

6. No challenge, to the impugned order of the Tribunal, has been laid by the respondent. As such, the respondent has accepted the finding of the Tribunal that the downward refixation of her pay was in order. We need not, therefore, enter into that arena.

7. The only issue that survives for consideration is, therefore, whether the Tribunal was correct in its finding that the recovery of overpayments from the respondent was contrary to the judgement in



Rafiq Masih and, therefore, whether the quashing, by the Tribunal, of the decision to effect recovery of overpayments from the respondent was correct in law.

8. In our opinion, the answer to the first query has to be in the negative, and the answer to the second query in the affirmative. In other words, while **Rafiq Masih** may not apply, the petitioners could, nonetheless, not have directed recovery of overpayments from the respondent in the manner in which they did.

9. **Rafiq Masih** is cited as the classical decision that governs the legitimacy of recovery of overpayments from Government employees. Para 18 of the said report delineates specific circumstances in which recovery *cannot* be made from Government employees. It reads:

“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.



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(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.

10. Having heard Mr. Mishra, learned Counsel for the petitioners and Mr. Padma Kumar S., learned Counsel for the respondent, though the principles in the judgment of the Supreme Court in *Rafiq Masih* may not apply as the recovery was within five years of the overpayment, it is seen that recovery was made without any show cause notice to the respondent. It is not the case of the petitioner that the overpayment to the respondent was on any fault of the respondent.

11. Monies paid to a Government servant cannot be recovered without affording her, or him, an opportunity to show cause against such recovery.

12. We are also informed that the respondent has, in the meanwhile, retired from service.

13. As such, we are in agreement with the Tribunal that the amount could not have been recovered, but for the reason that the respondent was not put to show cause against such recovery, before it was directed.

14. For that limited reason, we do not see any ground to interfere with the impugned order.



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15. The writ petition is dismissed.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

DECEMBER 17, 2024

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Click here to check corrigendum, if any