



2025:DHC:600-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 1239/2025, CM APPL. 6048/2025, CM APPL. 6049/2025, CM APPL. 6050/2025 & CM APPL. 6051/2025

UNION OF INDIA & ORS.Petitioners
Through: Ms. Suruchi Mittal SPC for
UOI

versus

SURESH KUMARRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)
31.01.2025

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C. HARI SHANKAR, J.

1. This writ petition assails judgment dated 15 October 2024, passed by the Central Administrative Tribunal¹ in OA 1730/2016.

2. The respondent was appointed as Lower Division Clerk² in the Institute of Hotel Management, Catering & Nutrition, Pusa³ on 1 December 1980. He was, thereafter, promoted as Upper Division Clerk in 1992 and retired from the said Institute on 31 March 2016.

3. Without issuing any show cause notice to the respondent, the

¹ "Tribunal" hereinafter

² "LDC" hereinafter

³ "Institute" hereinafter



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following Office Order was passed by the Institute on 18 February 2016.

“OFFICE ORDER

That as per Para No. 3 of the Internal Audit Report – Provisional received from Senior Accounts Officer, Ministry of Civil Aviation and Tourism, Government of India, the following employees of the Institute are being paid excess amount by making wrong pay fixation under MACP

- (1) Shri Suresh Kumar, Upper Division Clerk
- (2) Shri Rajesh Bansal, Accountant
- (3) Shri Anil Bhushan Chaddha, Upper Division Clerk

Shri Neeraj Jain, UDC Administrative Department is directed to inform the undersigned through the Accountant about the details of excess payments made to the above mentioned employees under MACP.

In this regard, appropriate reply has been sent to the Senior Accounts Officer, Ministry of Civil Aviation and Tourism, Government of India.

Presently the matter is pending for settlement under the Ministry of Tourism, Government of India.

Shri Suresh Kumar Chauhan, UDC is retiring on 31st March 2016. Therefore, by taking immediate action, apart from the retention money of Rs. 1000/- from the gratuity of Shri Suresh Kumar, the excess amount given to him till date should be deducted from his retirement benefit and withheld till the matter is settled.

Pension of Shri Suresh Kumar Chauhan, UDC, should be determined on the basis of grade pay of Rs. 4600/-

Sd/-
Alok Shivpuri
Principal”

4. Aggrieved by the aforesaid Office Order, which downwardly refixed the respondent's pay as well as proposed effecting of recoveries of excess payments made to him, the respondent

Signature Not Verified

Digitally Signed By: AWP.(C) 1239/2025
KUMAR
Signing Date: 03.02.2025
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approached the Tribunal by way of OA 1730/2016.

5. Following the judgment of the Supreme Court in *Rafiq Masiq State of Punjab*⁴ and *Jagdish Prasad Singh v State of Bihar*⁵, the Tribunal has set aside the downward re-fixation of the respondent's pay as well as the decision to effect recoveries from him. The reasoning of the Tribunal reads thus:

“14. We have carefully considered the respondents' contentions, particularly the reliance on Rule 71 of the CCS (Pension) Rules, 1972 (incorrectly cited as the CCS (Leave) Rules in the counter reply). Rule 71 is reproduced below:

“71.

Recovery and adjustment of Government dues

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the [retirement gratuity] becoming payable

(3) The expression 'Government dues' includes –

(a) dues pertaining to Government accommodation including arrears of licence fee [as well as damages for the occupation of the Government accommodation beyond the permissible period after the date of retirement of the allottee)] if any;

(b) dues other than those pertaining to Government accommodation, namely, balance. of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961).

⁴ (2015) 4 SCC 334

⁵ 2024 SCC OnLine SC 1909



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Footnote: 1. Substituted by G.I., Dept. of P. & P. W., Notification No. 2/18/87-P. & P.W. (PIC), dated the 20th July, 1988, published as S.O. No. 2388 in the Gazette of India, dated the 6th August, 1988.

• Substituted vide D/o. P&PW Notification No.20/16/1998-P&PWO dated the 7th April 2010 published in Gazette of India under SO 829(E) date the 12th April 2010.”

15. A bare perusal of the rule reveals that the recovery pertains to government accommodation dues and does not apply strictly to all dues. Therefore, the argument advanced by the respondents is fallacious. It is undisputed that the direction for the overpayment of wages was issued just two months prior to the applicant's superannuation.

16. The reliance on the undertakings of the two employees mentioned in the impugned order dated 06.01.2015 does not hold much weight. Even if we accept the respondents' argument, there is no evidence to show that the impugned order was based on a reference to the screening committee, which had earlier accorded the applicant the benefit of MACP. It would have been appropriate for the respondents to place the case. before the screening committee and grant the applicant an opportunity to be heard.

17. We also note that an Office Memorandum (OM) dated 02.03.2016, issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, stipulates in clause 5 as follows:

"5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No. 18/26/2011-Estt (Pay-I) dated 6th February, 2014."

18. Moreover, there is nothing on record to show that any inquiry or departmental action was initiated against any delinquent employee responsible for the wrongful recovery. We are also



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fortified by the recent decision passed by the Hon'ble Apex Court in the matter of ***Jagdish Prasad Singh v. State Of Bihar*** on 8 August, 2024, which supports the applicant's case.

19. Based on the above, we quash and set aside the impugned order dated 06.01.2015. The pay fixation made prior to the impugned order is restored. The applicant is entitled to a refund of ₹ 3.10 lakh, already deducted from the gratuity. We also make it clear that any consequential relief pursuant to the restoration of the order shall follow. This exercise shall be completed within three months from today, failing which the applicant shall be entitled to interest at GPF rates.”

6. Aggrieved by the decision of the Tribunal, the petitioner has approached this Court by means of the present writ petition.

7. We have heard Ms. Mittal, learned Counsel for the petitioner at some length.

8. The issue in controversy is squarely covered by the judgment of the Supreme Court in ***Jagdish Prasad Singh*** which, *inter alia*, relies on the earlier decisions of the Supreme Court in ***Syed Abdul Qadir v State of Bihar***⁶, ***Rafiq Masih*** and ***Thomas Daniel v State of Kerala***⁷.

9. We deem it appropriate to reproduce paras 20 to 24, 27 and 28 of the decision in ***Jagdish Prasad Singh***, thus:

“20. Without prejudice to the above findings, we are of the view that no departmental action could have been initiated by the State against the appellant after eight years following his superannuation because the employer employee relationship had come to an end after the appellant's superannuation. The order directing reduction in pay scale and recovery from the appellant was manifestly not preceded by any show cause notice and was thus, passed in gross

⁶ (2009) 3 SCC 475

⁷ 2022 SCC OnLine SC 536



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violation of the principles of natural justice. Pursuant to the order dated 20th July, 2009 passed in the Writ Petition No. 6714 of 2009 filed by the appellant, he submitted a representation to the Secretary, Food and Consumer Protection Department, Government of Bihar, which *vide* order dated 8th October, 2009 was rejected, preceded by a personal hearing. A perusal of the said order would indicate that the Secretary took a view that as per paragraph 11 (*supra*) of the Government Resolution, the first/second time bound promotion of the appellant had come to an end automatically w.e.f. on 1st January, 1996 and thus, the appellant was required to be redesignated to the post of Marketing Officer and would be entitled to the revised pay of Rs. 5500-9000 w.e.f. 1st January, 1996 as recommended by the Fitment Committee. Thus, even in this order, the promotion conferred to the appellant to the post of ADSO on 10th March, 1991 is not doubted.

21. We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of *Syed Abdul Qadir (supra)*, this Court held 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. The relevant paras of the *Syed Abdul Qadir (supra)* are extracted hereinbelow : -

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

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



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recovery of the amount paid in excess.

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.”

(emphasis supplied)

22. Similarly, this Court in *ITC Limited v. State of Uttar Pradesh*, held as under : -

“108. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made, courts have recognised the need to give limited relief in regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation.”

(emphasis supplied)

23. In the case of *State of Punjab v. Rafiq Masih (White Washer)*, this Court held as under : -

“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



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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."

(emphasis supplied)

24. Recently, this Court in *Thomas Daniel v. State of Kerala*, held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years.

27. The order dated 8th October, 2009 passed by the State Government directing reduction in the pay scale of the appellant from Rs. 6500-10500 to Rs. 5500-9000 w.e.f. 1st January, 1996 and directing recovery of the excess amount from him is grossly illegal and arbitrary and is hereby quashed and set aside. The impugned order dated 27th August, 2012 passed by the Division Bench of the High Court does not stand to scrutiny and is hereby quashed. Therefore, the appellant shall continue to receive the pension in accordance with the pay scale of Rs. 6500-10500.

28. In case, if any reduction in pension and consequential recovery was effected on account of the impugned orders, the appellant shall be entitled to the restoration/reimbursement thereof with interest as applicable."

(Emphasis as contained in the original judgement)



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10. Though Ms. Mittal sought to contend that this was a case of erroneous fixation by fraud and misrepresentation, as the respondent was a member of the Committee which has determined the fixation of pay, there is no such allegation against the respondent.

11. The order by which the respondent's pay was downwardly refixed merely notes that there was a mistake in refixation. Even if the respondent was a member of the Committee which refixed the pay, that does not *ipso facto* indicate that there was a fraud or misrepresentation.

12. From the time of *Commissioner of Police v Gordhandas Bhanji*⁸, the law is that an order has to stand or fall on the basis of what is contained therein and cannot be sought to be improved by arguments made in Court or even by an affidavit. *Mohinder Singh Gill v The Chief Election Commissioner*⁹, while relying on *Gordhandas Bhanji*, held, classically, thus:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct

⁸ AIR 1952 SC 16
⁹ (1978) 1 SCC 405



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of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

It is not permissible, therefore, for the petitioner to urge fraud or misrepresentation, when no such allegation is contained in the order dated 18 February 2016 whereby the respondent’s pay was downwardly refixed.

13. Ms. Mittal also seeks to rely on para 9 of *Thomas Daniel* to submit that, if the employee had knowledge of the fact that there was an excess payment made to him, the Court could, in its discretion, uphold the decision to effect recovery. The passage reads thus:

“9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee *had knowledge that the payment received was in excess of what was due or wrongly paid*, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

14. We are of the opinion that the manner in which Ms. Mittal is interpreting para 9 of the judgment in *Thomas Daniel* is erroneous. The paragraph has to be interpreted holistically. The Supreme Court



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has clearly held in the said paragraph that, where the excess payment is made on the ground of fraud or misrepresentation, recovery would be justified. No doubt, it has gone on to say that if the employee had knowledge of the fact that excess payment was being made to him, even in that case, recovery could be justified. The knowledge on the part of the employee, as would justify recovery of the overpayment, has to be *that the payment made was in excess of his entitlement*. It goes without saying that, if an employee knowingly and consciously receives payment in excess of what, *to his knowledge*, is due to him, he cannot later plead equities when such extra payment is sought to be recovered.

15. There is, however, no material on record to indicate that, at the time when the respondent's pay was fixed under the MACP, he knew that he was being paid more than his entitlement. Admittedly, it was only later, at the time of internal audit in 2011, that this fact became known.

16. Such knowledge, which comes later, cannot be a basis to justify recovery. In this context, one may refer, profitably, to para 9 of the judgment of the Supreme Court in *High Court of Punjab & Haryana v Jagdev Singh*¹⁰ which contains the most oft-cited relaxation from the rigour of para 18 of *Rafiq Masih*:

“9. The submission of the respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the State. This, in our view, will have no application to a situation such as the present where an undertaking was specifically



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furnished by the officer *at the time when his pay was initially revised* accepting that any payment found to have been made in excess would be liable to be adjusted. *While opting for the benefit of the revised pay scale*, the respondent was clearly on notice of the fact that a future refixation or revision may warrant an adjustment of the excess payment, if any, made.”

(Emphasis supplied)

17. The proscriptions against recovery, as contained in para 18 of **Rafiq Masih**, in any case apply to cases where, in fact, there has been a mistaken overpayment. Clearly, therefore, the mere fact of a mistaken overpayment cannot *ipso facto* justify recovery of the overpaid amount. If the case falls within one or more of the contingencies envisaged in clauses (i) to (v) of para 18 of **Rafiq Masih**, the overpayment cannot be recovered.

18. In cases falling within clause (ii) in para 18 of **Rafiq Masih**, where recovery is being sought to be effected from retired employees, of within a year prior to their retirement, **Jagdev Singh** permits such recovery *if the employee, at the time of receiving the payment, undertakes to refund any excess if subsequently noticed, or is put on notice regarding such recovery*. The relevant date, whether it is for “knowledge” as envisaged in **Thomas Daniel**, or undertaking or “notice” as envisaged in **Jagdev Singh**, is, therefore, the *date when the alleged overpayment is made*. If, *on that date and at that time*, the employee knows that he is being overpaid, or undertakes to refund any overpayment if subsequently noticed, or is put on notice to that effect, recovery can be made later, uninhibited by **Rafiq Masih**.

19. There is nothing to indicate that, at the time when the respondent was granted grade pay of ₹ 5,400/-, he was aware of the



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fact that the fixation was erroneous. It is clearly only thereafter that the Audit Report found the fixation to be erroneous.

20. If that was the case, it was incumbent on the petitioner to place the respondent on notice before downwardly refixing the pay, following the law laid down by the Supreme Court in ***Jagdish Prasad Singh***. Recovery of overpayment would, in any case, stand proscribed.

21. We find no ground to interfere with the judgment of the Tribunal which is upheld in its entirety.

22. The writ petition is dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 31, 2025

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Click here to check corrigendum, if any