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

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Date of Decision: 3rd February, 2025

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W.P.(C) 8932/2023 & CM APPL. Nos. 33857/2023, 47649/2023, 57209-10/2023, 62454-56/2023, 5777/2024, 11268/2024, 19186/2024

RAJENDRA ALEXANDER & ORS.

.....Petitioners

Through: Mr. Sanjoy Ghose, Senior Advocate with Mr. Ritesh Khatri and Mr. Rohan Mondal, Advocates.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Shekhar Vyas and Ms. Neha Warriar, Advocates for Respondent No.1.

Mr. Jayant K. Sud, Senior Advocate with Mr. Divyanshu Srivastava, Mr. Lokesh Sinhal, Ms. Shayal Anand, Mr. Kartik Jasra, Mr. Sai Manik Sud, Mr. Prannit Stefano A. and Mr. Gaurav Mehgal, Advocates for Respondent No.2.

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

1. This writ petition is preferred on behalf of the Petitioners laying a challenge to Office Order No.41/2020 dated 17.04.2020 and Circular dated 07.09.2020. Direction is sought to restrain Respondent No. 2/National Hydroelectric Power Corporation Limited ('NHPCL') from initiating any recovery against the Petitioners in furtherance of the impugned order/ circular and to restore the superannuation medical benefits and renew the medical cards in favour of the Petitioners.

2. Facts to the extent necessary are that Petitioners are retired employees of NHPCL, a Public Sector Undertaking under Respondent No.1. Petitioners



joined NHPCL on different dates between 1971 to 1999 as per the details furnished in the writ petition. In the year 1990, the Supreme Court in a pending litigation directed that all employees of NHPCL appointed on or after 01.01.1989 will be governed by such pay scales and allowances as may be decided by the Government of India ('GoI') in its discretion and accordingly, vide order dated 07.05.1992, NHPCL decided that all employees appointed in 1989 will be allowed High Power Pay Committee ('HPPC') pay scales and related benefits.

3. A circular was issued by NHPCL bearing No.12/93 dated 19.05.1993 adopting the pay scales, allowances and other perquisites on Industrial Dearness Allowance ('IDA') pattern w.e.f. 01.01.1989 in respect of employees (excluding Board level functionaries), appointed or promoted on or after the said date. Clause 3.1 provided an option to the existing employees to opt for the IDA pattern and related scales of pay and accordingly, most of the Petitioners switched over to IDA scales exercising irrevocable option as offered by NHPCL in 1996. Department of Public Enterprises ('DPE') issued an O.M. dated 25.06.1999 revising the pay scales in respect of Board level and below Board level Executives and non-unionized Supervisors of Central Public Sector Enterprises ('CPSEs') w.e.f. 01.01.1997, pursuant to recommendations of Justice S. Mohan Committee set up by GoI to recommend revision of pay and allowances for these Executives. Para (4) of the O.M. provided for grant of maximum three stagnation increments for those who reached the maximum of their scales. Para (7) provided that pay revision would be subject to Presidential Directives and para (13) envisaged a Mediclaim cover through Insurance Companies for the retired employees and provided that the said policies would be funded from collateral contributions from both employees and



organisations. The revised pay scales were provided in Annexure-I to the O.M. dated 25.06.1999.

4. On 21.01.2000, an Office Order No.3/2000 was issued by NHPCL conveying its decision to implement the revised pay scales, fitment formula and DA guidelines in terms of O.M. dated 25.06.1999 issued by DPE. The revised pay scales were incorporated in the office order. In respect of stagnation increments, it was provided in para (6) that employees who reached the maximum of the scales of pay shall be granted upto a maximum of three stagnation increments, but there was no mention of periodicity for grant of increments. It is averred that Respondent No.1/Ministry of Power accorded approval to the proposal of NHPCL for revision of pay scales vide letter dated 04.04.2006 w.e.f. 01.01.1997 with increased rates of increments and informed NHPCL that Ministry had no objection to the adoption of revised pay scales being considered by NHPCL insofar as the range of pay scales was in line with the scales prescribed by DPE on the basis of recommendations of Justice S. Mohan Committee.

5. It is further averred that revised pay scales were implemented by NHPCL vide Office Order No.22/2006 dated 09.05.2006 on IDA pay pattern and the revised pay scales were provided in para (1) of the order. Para (9) of the said order again provided for three stagnation increments and it was specifically stipulated that stagnation increment was to be released on the anniversary date of the increment and paid as Stagnation Pay. It was also provided that if the basic pay and special pay of an employee reaches the maximum of the pay scale at any time during the period 01.01.1997 to 31.12.2006, he will be allowed stagnation increments at the rate of increment last drawn, on his due date of increment. There was no mention of any period for grant of stagnation increments.



6. After the pay scales were revised under 1997 pay structure, DPE issued an O.M. dated 26.11.2008, recommending pay revision w.e.f. 01.01.2007 and NHPCL implemented the recommended revised pay scales from 01.01.2007 and allowances w.e.f. 26.11.2008, provisionally, vide Office Order No.46/2010 dated 02.11.2010. It was provided in para 1.3 of the order that pay of Executives on the rolls of NHPCL on 31.12.2006 shall be re-worked notionally in the pay scales as provided in Column 3 of the Table in Annexure-1 w.e.f. 01.01.1997 to 31.12.2006 and based thereon, pay shall be fixed on 01.01.2007 in the revised pay scales as at Column 4 and other conditions regulating the pay shall remain unchanged. Para 2.1(d) provided protection of actual emoluments drawn and para 21 provided that with regard to payments already made to employees on account of salaries following modified pay scales from 01.01.1997 to 31.12.2006, there will be no payment/recovery on account of re-working of pay notionally in the pay scales with DPE increments w.e.f. 01.01.1997, till further orders. By the same order, officers in E-7 (Chief Engineer/Chief) and E-8 (General Manager) grades in the pre-revised scales of Rs.19500-25600 and Rs.20500-26500, respectively were placed in the same scale of Rs.51300-3%-73000 and given promotion benefits in terms of para 3 of 'Pay on Promotion' as prescribed in Personnel Manual of NHPCL.

7. It is averred that separate Office Order was issued on 27.12.2013 by Respondent No. 1 stating that deviant pay scales fixed w.e.f. 01.01.1997 shall not be regularized, however, no recovery shall be made for the excess pay drawn from 01.01.1997 onwards considering the difficulties in effecting recoveries and also that such recoveries may de-motivate the staff. By O.M. dated 03.08.2017, DPE issued orders for pay revision w.e.f. 01.01.2017 for Board level and below Board level Executives and non-unionized



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Supervisors of CPSEs. Since Presidential Directive was issued, NHPCL implemented the pay revision w.e.f. 01.01.2017 vide Office Order dated 30.05.2018 again providing for increments, stagnation increments and superannuation benefits. With Cabinet approval, Respondent No.1 regularised the adopted pay scales of below Board level Executives w.e.f. 01.01.1997 vide order dated 29.01.2019 in four PSEs i.e. NHPCL, SJVN Ltd., NEEPCO Ltd. and THDCIL and pursuant thereto, NHPCL issued Office Order dated 19.03.2019 and regularized the pay scales of below Board level Executives w.e.f. 01.01.1997. Significantly, scales of pay w.e.f. 01.01.1997 adopted in pursuance of order of the Ministry dated 04.04.2006 and implemented vide order dated 09.05.2006 were categorically regularized. Consequently, provisional revised pay scales w.e.f. 01.01.2007 as implemented vide order dated 02.11.2010 were also regularized. In para 2.2 of order dated 19.03.2019, it was stipulated that conditions regulating the pay such as fitment methodology, rate of annual increment, etc. for the period 01.01.2007 to 31.12.2016 shall remain unchanged. In the meantime, Petitioners retired on different dates between 2008 to 2019.

8. It is averred in the writ petition that *albeit* both the 1997 and 2007 pay structures were regularized and the chapter was closed, however, on account of representations received from some Executives pointing out a pay anomaly, whereby their juniors were receiving higher pay, an internal Committee was constituted headed by Sh. A.K. Singh, the then E.D., NHPCL, which submitted its report on 21.08.2019 to the CMD. Basis this report, NHPCL issued Office Order No.41/2020 dated 17.04.2020 implementing the recommendations of the Committee and carrying out amendments in the 1997 and 2007 pay structures as follows:-



“1. Promotion of Executives from Chief/Chief Engineer (E-7 grade) to the post of General Manager (E-8 grade) in the same pay scale of 51300-3%-73000 shall be treated as redesignation, thus the promotional benefit of notional increment granted if any on such re-designation from Chief (E-7) to General Manager (E-8) in the same pay scale of 51300-3%-73000 in the 2007 pay structure shall be withdrawn w.e.f 01.01.2007. Accordingly the Stagnation Increments which was withdrawn in the 2007 pay structure on such promotion shall be restored.

2. Increment, if any, falling due on 01.01.2007 shall be granted first in the pre-revised pay scale (1997 pay revision) and only thereafter fitment benefit shall be granted, and pay fixed in the revised pay scales as on 01.01.2007. Accordingly clause 3.1 of Part-I Office Order No: 46/2010 dt: 02.11.2010 stands amended to above extent.

3. Stagnation increment shall be granted once in two years on reaching the maximum of the pay scale in the 1997 pay structure i.e during the period from 01.01.1997 to 31.12.2006, thus clause 9 of the of Part-I Office Order No: 2212006 dt: 09.05.2006 shall stand amended to above extent.

4. Employees who have been appointed on or after 01.01.1989 and continued in CDA pay scales, shall be placed in IDA Pay Scales retrospectively from the date of their initial appointment in pursuance to Part-I Office Order No: 23/90 dt:10.07.1990 & Office Order No: 12/93 dt: 19.05.1993.

Other terms and conditions of above mentioned office orders shall remain unchanged. Pay fixation of employees shall be reviewed in the light of aforesaid decisions and regulated accordingly.”

9. Basis the Office Order dated 17.04.2020, the Finance Division of NHPCL carried out re-fixation of the pay even in case of retired employees and drew up a due-drawn statement from 01.01.1997 onwards thereby giving retrospective effect to the said order resulting in recoveries from large number of employees for the past period including retired employees, such as the Petitioners. In furtherance to order dated 17.04.2020, NHPCL issued Circular No. 492 dated 07.09.2020 prescribing the mode of recovery from retired employees *inter alia* directing that the HR Division shall issue notices to all ex-employees who failed to deposit the amounts and will initiate legal action to make recoveries. Individual notices were sent to the employees in this regard.



10. It is further stated that some of the Petitioners received notices of recovery and chose to reply while some did not even receive the notices. Some Petitioners approached Respondent No. 1 and NHPCL representing against recoveries but there was no positive response and vide letter dated 23/24.05.2023, Petitioners were again asked to deposit the alleged excess amounts, failing which their medical facilities will be stopped or suspended. This was based on a complete misreading of Rule 3.2.3(d) of NHPCL Retired Employees Health Scheme ('REHS') and this triggered the filing of the present writ petition. Be it noted that when the writ petition was listed for admission on 06.07.2023, Court stayed recoveries from the Petitioners in light of the judgment of the Supreme Court in *State of Punjab and Others v. Rafiq Masih (White Washer) and Others*, (2015) 4 SCC 334, and the interim order continues till date.

11. Mr. Sanjoy Ghose, learned Senior Counsel for the Petitioners raised the following contentions:-

(a) Impugned order dated 17.04.2020 has been issued by NHPCL without due approval of Respondent No.1 and is without jurisdiction. NHPCL is seeking to recover stagnation increments granted to the Petitioners from 01.01.1997 to 31.12.2006 and withdraw the fixation benefits on promotion to the post of General Manager as also change the methodology of grant of increments due on 01.01.2007 for the purpose of pay fixation, whereas the benefits were granted to the Petitioners after due approval of the Board of NHPCL as per the then prevalent Rules. There are no allegations of fraud or misrepresentation against the Petitioners for issuing earlier office orders and/or in receiving arrears of stagnation increments, promotion benefits and deciding pay fixation methodology and therefore, no recoveries can be made from them.



(b) *Albeit* on merits, the impugned order dated 17.04.2020 is illegal and re-fixation cannot be sustained in law, assuming for the sake of argument that the re-fixation is correct, no recoveries can be made from the Petitioners, who are retired employees, in light of the judgment of the Supreme Court in ***Rafiq Masih (supra)***, wherein the Supreme Court held that recovery from retired employees will be impermissible in law. Relying on the judgment of the Supreme Court in ***Syed Abdul Qadir and Others v. State of Bihar and Others, (2009) 3 SCC 475***, it was observed that it is apparent from the conclusions drawn in the said judgment that recovery of excess payments made from employees who have retired from service or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. The Supreme Court further observed that it cannot be forgotten that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit before their retirement and in this backdrop, recovery from retired employees was held to be impermissible. In this context, reliance was also placed on the judgments of the Division Benches of this Court in ***Dilbagh Singh Bains v. Delhi Development Authority and Others, 2023 SCC OnLine Del 1404***; ***Govt. of NCT of Delhi and Others v. Mohinder Singh Siwach, 2023 SCC OnLine Del 5871***, as also of this Court in ***D.C. Murmu v. Union of India and Others, 2023 SCC OnLine Del 1753***. Reliance was placed on the judgment of the Supreme Court in ***M.P. Medical Officers Association v. State of Madhya Pradesh and Others, 2022 SCC OnLine SC 1099***, wherein the Supreme Court held that since there was no misrepresentation by the employees and the mistake, if any, was of the department who issued the circular in question under which benefits were given, recovery was not justified, more so, when some of the employees had



retired on superannuation and recovery shall have to be effected from their pensionary benefits.

(c) Petitioners are drawing meagre amount of pensions from Employees' Pension Scheme, 1995 ('EPS-95') ranging from Rs.969/- to Rs.3,600/- per month and annuity from LIC on account of superannuation scheme as per 2007 revision, ranging from Rs.382/- to Rs.20,650/- per month and it would be wholly iniquitous to permit the impugned recoveries. Petitioners are also squarely covered under paragraph 18(v) of the judgment in **Rafiq Masih (supra)**, wherein the Supreme Court held that where the Court arrives at a 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 employer's right to recover, recovery would be impermissible. In the present case, the prime contention of the Petitioners is that the recoveries are illegal as benefits of the pay revisions and stagnation increments were correctly disbursed but assuming that there is an alleged anomaly, recoveries cannot be made at this stage from the retired employees. NHPCL has been unable to make out a case that stagnation increments were payable once in two years under the 1997 and 2007 pay revisions. Insofar as withdrawal of promotion increments on account of treating the movement from E-7 to E-8 grade as re-designation is concerned, the decision was taken for the first time vide order dated 17.04.2020 and cannot be applied retrospectively to re-fix the pay and consequently the pension of the Petitioners.

(d) Even otherwise, the impugned order dated 17.04.2020 is illegal and arbitrary. Taking the Court to the backdrop, it was urged that vide O.M. dated 25.06.1999, DPE issued guidelines on pay revision with effect from 01.01.1997 for Board level posts and below Board level posts including non-



unionised Supervisors in CPSEs. This O.M. provided for grant of upto a maximum of three stagnation increments for those who reach the maximum of their scales. Decision to implement revised pay scales was taken by NHPCL vide Office Order dated 21.01.2000. Respondent No.1 gave approval to implement the pay scales vide letter dated 04.04.2006 and for their adoption w.e.f. 01.01.1997 and while doing so, notice was taken of the proposal of the Board of NHPCL to remove anomalies. The revised pay scales were implemented vide order dated 09.05.2006 by NHPCL and clearly, in para 9, there was a stipulation for grant of three stagnation increments, to be released on the anniversary date of the increment. Therefore, at this stage, the issue of 1997 pay structure stood crystalized and finalized and was not vulnerable to a re-consideration. Moreover, after the Ministry of Power regularized the pay scales from 01.01.1997 vide order dated 29.01.2019, NHPCL issued an Office Order dated 19.03.2019 specifically stating that scales of pay w.e.f. 01.01.1997 implemented vide Office Order dated 09.05.2006 stand regularized. Significantly, this order categorically provided in para 9 for grant of three stagnation increments but no periodicity was mentioned. Having regularized the pay scales in terms of this order, there was no scope for amending para 9 by the impugned order dated 17.04.2020.

(e) DPE issued O.M. dated 26.11.2008 for pay revision w.e.f. 01.01.2007 for Board level and below Board level Executives including non-unionised Supervisors in CPSEs and vide order dated 02.11.2010, NHPCL implemented the revised pay scales w.e.f. 01.01.2007 by notionally re-working the pay of the Executives from 01.01.1997 to 31.12.2006 and in para 1.3, it was stipulated that all other conditions regulating the pay for this period shall remain unchanged and para 2.1(d) provided for protection of



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actual emoluments drawn.

(f) NHPCL had clearly provided the methodology for drawal of increments due on 01.01.2007 in Clause 3.1, where it was stated that increment due on 01.01.2007 shall be drawn in the revised pay scale. Para 21 provided that as regards payments already made to employees on account of salary, following modified pay scales from 01.01.1997 to 31.12.2006, there will be no payment/recovery on reworking of pay notionally in the pay scales with increments w.e.f. 01.01.1997, till further orders. When DPE issued O.M. dated 03.08.2017, revising the pay scales from 01.01.2017 of Board level and below Board level Executives including non-unionised Supervisors in CPSEs, being a Presidential directive, NHPCL implemented the pay revision w.e.f. 01.01.2017 vide Office Order dated 30.05.2018 and with Cabinet approval, Respondent No.1 vide letter dated 29.01.2019 regularised the adopted pay scales of below Board level Executives in four CPSEs, i.e. NHPCL, SJVN Ltd., NEEPCO Ltd. and THDCIL w.e.f. 01.01.1997. After regularisation, NHPCL issued order dated 19.03.2019, where in para 2.2, it was stipulated that conditions regulating the pay such as fitment methodology, rate of annual increment, etc. for the period 01.01.2007 to 31.12.2016 shall remain unchanged. After the said order and regularization of the pay scales by Respondent No.1, the nodal Ministry, without any authority and in the teeth of all the earlier orders, NHPCL erroneously issued the impugned order dated 17.04.2020 basis a Committee's report, which was constituted for a limited purpose and had no power to make recommendations contrary to the orders of the Ministry regularizing the pay scales and closing the chapter vide letter dated 29.01.2019, which was duly implemented by NHPCL on 19.03.2019 and after which arrears were disbursed to Petitioners, who by then had retired



and some of them as back in 2008 and 2009 etc. The impugned order is an internal decision of NHPCL and has no approval from the DPE and/or Ministry of Power.

(g) The genesis of the recovery are the representations received from some senior Executives who were purportedly receiving lesser pay than their juniors. Basis these representations, an internal committee was constituted, which submitted its report on 21.08.2019 to CMD, NHPCL. Based on this report, NHPCL issued Office Order No.41/2020 dated 17.04.2020 amending the 1997 and 2007 pay revisions structures, besides shifting to IDA scales for those few who joined in CDA scales on or after 01.01.1989. Pursuant to this, Circular No.492 dated 07.09.2020 was issued directing recoveries from serving as also retired employees. Individual recovery notices were also issued to the retired employees on three frivolous grounds: (a) stagnation increments were to be granted once in two years on reaching the maximum of the pay scale in the 1997 pay structure, i.e. for the period 01.01.1997 to 31.12.2006; (b) increments due on 01.01.2007 were to be calculated on pre-revised scale and after fitment, the pay should have been fixed in the revised pay scale; and (c) promotion from E-7 to the post of GM in E-8 Grade in the same pay scale of Rs.51,300-73,000 should be treated as re-designation and therefore, promotional benefit on notional increment be withdrawn and stagnation increments granted be restored. Erroneously and illegally, para 9 of Office Order dated 09.05.2006 was amended despite the regularization of the pay scales in terms of this order by NHPCL vide order dated 19.03.2019. The impugned order and the recovery notices cannot be countenanced in law after regularization of the pay scales by the Ministry under a Presidential directive and more so, when the O.Ms. and office orders provided no periodicity for grant of stagnation increments.



(h) Fulcrum of the case of NHPCL is that Petitioners and other effected employees had knowledge that both the pay scale revisions, i.e. 1997 and 2007 were provisional and interim in nature, for want of GoI approval, which came only in January, 2019 and that Petitioners had given undertakings to refund any excess payment. The foundation of the case of NHPCL is completely flawed. Perusal of Office Order No.3/2000 dated 21.01.2000 would show that while revising the existing pay scales of Executives and Supervisors w.e.f. 01.01.1997, in the table in para 1 of the order, there was a Note against E-1 and E-7 scales stating that they were provisional and subject to approval from GoI and only the incumbents of these posts were called upon to give undertakings in writing in the enclosed format, that in the event of any alteration or modification in the proposed revised pay scales or otherwise as decided by GoI, the same will be implemented and necessary adjustments will be made from arrears/future salary. Therefore, no other revised pay scale was provisional or contingent on any approval and significantly, even in case of provisional pay scales, adjustment was envisaged from arrears/future salary and not from retiral benefits, in case of any alteration in the pay scales, which never happened and thus the undertakings lost their value. Even otherwise, the undertakings were restricted to revisions in E-1 and E-7 pay scales and have nothing to do with the stagnation increments payable under the 1997 pay structure since no periodicity was mentioned in any order/O.M.

(i) There is another reason why no recovery can be made from the Petitioners. In para 21 of Office Order dated 02.11.2010, while revising the pay scales w.e.f. 01.01.2007, it was clearly stipulated that as regards payments already made to employees on account of salaries following modified pay scales from 01.01.1997 to 31.12.2006, there will be no



recovery on account of re-working of pay notionally in the pay scales with increments w.e.f. 01.01.1997.

(j) Action of NHPCL in stopping the superannuation medical benefits of the Petitioners in the guise of recovery is unauthorized, arbitrary and illegal and based on gross misreading of Rule 3.2.3(d) of REHS, which provides that benefits under the Scheme shall not be admissible where the retired employee has not cleared his/her outstanding dues of the Corporation at the time of retirement or subsequently. The expression 'subsequently' only means pending dues at the time of retirement and not dues which allegedly become outstanding on account of some subsequent changes in a policy decision. Post-retirement medical facility is a part of superannuation benefits and was extended to employees under the 2007 pay revision vide DPE O.M. dated 26.11.2008. Para 15.0 of Office Order No. 46 of 2010 dated 02.11.2010 provides that superannuation benefits shall be paid @ 30% of revised Basic Pay and DA, which shall include EPF, Gratuity, Pension and Contributory Scheme of post-retirement medical facilities. It also provides that existing Contributory Scheme of retired employees and REHS for Executives shall continue to remain operative. This rule cannot be construed to stop the medical benefits under the Scheme by treating the amounts allegedly recoverable post-retirement on account of erroneous re-fixation of pay going back to 01.01.1997, as outstanding dues.

(k) NHPCL has not considered that at the time of superannuation, after clearing all outstanding dues and making payments of requisite membership of REHS, retired employees become members of the Scheme and therefore, invocation of para 3.2.3(d) which is applicable at the time of becoming member of the Scheme to effect recovery due to amendment in pay fixation rules after retirement, is wholly unjustified. Each of the Petitioners retired



after clearing the dues and grant of 'No Dues Certificate' and thus there can be no impediment in the Petitioners' enjoying the benefits under REHS. In pay revision w.e.f. 01.01.2007, CPSEs were allowed 30% of Basic Pay towards superannuation benefits which included CPF etc. and REHS Trust was created separately for investing and meeting liabilities of expenditure on this account and no law would permit stoppage of medical facilities.

12. Mr. Jayant K. Sud, learned Senior Counsel appearing on behalf of NHPCL raises the following contentions:-

(a) The issues raised in the present writ petition are no longer *res integra* and have been decided by the Punjab and Haryana High Court against the Petitioners in a batch of writ petitions with lead matter, titled ***Prabhu Kumar Rawat and Others v. National Hydroelectric Power Corporation Ltd. & Others, CWP 14979/2020***, decided on 10.08.2021. Therefore, in light of the judgment of the Supreme Court in ***Prestige Lights Ltd. v. State Bank of India, (2007) 8 SCC 449***, this writ petition deserves to be dismissed as Petitioners have not even disclosed that similar writ petitions stand dismissed.

(b) The anomaly in pay fixation can always be rectified as excess payments are a loss to the public exchequer being without any authority of law and a result of *bona fide* mistake of NHPCL. The pay scale revision for Executives w.e.f. 01.01.1997 was an *ad hoc* measure and provisional, awaiting approval from GoI and therefore, pay revision from 01.01.2007 was implemented only provisionally. The first anomaly that occurred in the pay fixation in the 1997 pay structure was that the three stagnation increments that were payable on reaching the maximum of the scale were granted every year instead of once in two years and thus, no infirmity can be found in the impugned order to the extent it rectified this glaring anomaly.



(c) Second anomaly sought to be rectified was with respect to promotion increments granted erroneously treating upward movement from E-7 and E-8 grades of executives as promotion, contrary to Government guidelines as per which no two grades can be placed in the same pay scale. The anomaly came to light when representations were received from some Executives in E-8 grade. An Anomaly Committee was constituted by NHPCCL vide order dated 28.06.2019, wherein it was brought out by the representationists that on regularization of pay scales from 01.01.1997, most of the Executives who were stagnating at the maximum of the pay scale of Rs.51000-3%-73000 (E-7 Scale) or had drawn one or two or three stagnation increments, on their elevation as General Manager (E-8) in the same pay scale were suffering a loss of pay as their past service was ignored and stagnation increments drawn were taken away. As a result, juniors who were not promoted as GM in the 2007 pay structure, were drawing higher pay since their stagnation increments were carried forward for fixation of pay as on 01.01.2017. Committee recommended that promotion of Executives from E-7 to E-8 grade in the same pay scale shall be treated as re-designation and thus, promotional benefit of notional increment granted, if any, on such re-designation in the 2007 pay structure shall be withdrawn w.e.f. 01.01.2007 and stagnation increments withdrawn in 2007 pay structure on such promotion, shall be restored. This anomaly was sought to be rectified by the order dated 17.04.2020 and rightly so.

(d) The third anomaly was also rightly rectified. Increments, if any, falling due on 01.01.2007 were erroneously fixed on revised pay scales whereas they ought to have been granted first in the pre-revised pay scale i.e. 1997 pay revision and only thereafter fitment benefit was to be granted and pay fixed in the revised pay scales as on 01.01.2007. If an employer



discovers that pay of an employee has been wrongly fixed or any other benefit has been wrongly granted, there can be no impediment in the way of the employer to re-fix the pay and correct the anomaly. It was explained that Petitioners cannot find fault with the order dated 17.04.2020 as the same is in consonance with DPE O.Ms. and/or the recovery notices which are consequential to re-fixation of pay.

(e) Petitioners were themselves working at the managerial and senior positions and were in the decision-making regime and ought to have facilitated in rectifying the anomalies instead of contesting the impugned decision. PSUs have complete autonomy to work out pay fixations and do not require Government approval for the same. Petitioners heavily rely on Office Order dated 21.01.2000 to contend that the pay structure was not provisional and only E-1 and E-7 Scales were provisional overlooking that this order was superseded by order dated 09.05.2006.

(f) In supersession of order dated 21.01.2000, NHPCL issued order dated 09.05.2006 implementing first pay revision from 01.01.1997 and it was provided in para 14 that modified pay structure will be effective from 01.01.1997, however, revised higher pay between 1997 to 2006 and consequential benefits, i.e., revised higher pay from first pay revision as feeder for second pay revision were never given. Both the benefits were given from back date in April-May, 2019 in the form of arrears, after DPE's approval on 29.01.2019 and immediately, the recoveries were sought with no time lag. It was well known to the Petitioners and other employees that pay revision from 01.01.2007, pursuant to DPE O.M. dated 26.11.2008 was provisional and it was clearly provided in the order dated 02.11.2010 that revised implementation was subject to Government approval/regularization and recovery, if any, will be effected after regularization. Undertakings were



furnished by the employees to refund the amounts received on account of pay revision w.e.f. 01.01.2007 and allowances from 26.11.2008, in case of recovery. Since, first pay revision was provisional and the second was also implemented provisionally, consequential benefits of higher feeder pay from 01.01.1997 were not allowed in 2007 pay revision.

(g) DPE issued O.M. dated 14.12.2012 during pendency of regularization of 1997 and 2007 pay scales and provided in para 5(i) that stagnation increments given in 1997 or 2007 pay scales should have been granted only after reaching maximum of the prescribed scale and once in two years with maximum three increments only. It was further provided in para 5(iii) that increments, if any, due on 01.01.2007 should be granted first in the pre-revised scale and thereafter, fitment should be granted and pay fixed in the revised scale as on 01.01.2007. DPE issued guidelines on 24.12.2012 that two grades should not have the same pay scale. Ministry of Power vide letter dated 27.12.2013 conveyed that deviant pay scales w.e.f. 01.01.1997 shall not be regularized. On 29.01.2019, Ministry of Power approved the proposal to regularize the adopted pay scales of below Board level Executives in 4 PSUs including NHPCL from 01.01.1997 and NHPCL gave effect to the approval vide order dated 19.03.2019. However, in exercise of pay fixation, DPE OM's dated 14.12.2012 and 24.12.2012 were not taken into account and as a result, stagnation increments were given every year besides higher fitment benefit and error in fixation in E-7 and E-8 Grades crept in. This resulted in excess amounts being paid to the employees including the Petitioners in April-May, 2019.

(h) Pay anomaly was brought to the notice of NHPCL and a High-Level Committee was constituted and based on its report, the impugned order was passed. This information was put on NHPCL's website and intranet calling



for objections from serving and retired Executives, but no objections were received. Accordingly, re-fixation was done and amounts to be recovered were computed. NHPCL also communicated the amounts to be refunded to the retired employees individually. The chronology of events shows that the action of NHPCL is in consonance with DPE O.Ms. and guidelines and if an error has occurred during pay revisions, which were provisional, there is no illegality in recovering the amounts.

(i) Case of the Petitioners in challenging the recoveries is predicated entirely on the principles elucidated by the Supreme Court in **Rafiq Masih (supra)**, wherein the Supreme Court has held that recovery from retired employees is impermissible. However, this principle is inapplicable to the present case where Petitioners were in the first instance put to notice that any payment made in excess under the pay revisions, which were provisional, will be refunded and they had furnished undertakings in writing to this effect, without any protest or demur. O.Ms. of DPE regulating pay revisions were in the public domain and well known to the Petitioners. They were not ignorant of the undertakings given as well. Furthermore, para 18 (ii) of **Rafiq Masih (supra)** will not apply as it was in the context of only those retired employees who received excess payment first, then retired and recovery was sought after retirement on the reasoning that the recovery will be iniquitous as the earnings would have substantially dwindled or would be reduced on retirement. In the present case, Petitioners retired first and thereafter received huge arrears which were excess payments and within few months, recoveries were effected.

(j) Case of NHPCL is squarely covered by the judgment of Supreme Court in **High Court of Punjab and Haryana and Others v. Jagdev Singh, (2016) 14 SCC 267**, wherein the Supreme Court held that the principle that



recovery from retired employees or those who are due to retire within one year of the order of recovery is impermissible, is inapplicable where an officer to whom payment was made in first instance was clearly put to notice that excess payment was liable to be refunded. Once Petitioners have given an undertaking while opting for revised pay scales that they would refund the excess amounts paid, they will be bound by the same as in the case of *Jagdev Singh (supra)*.

(k) Much was argued by the Petitioners that having rendered a 'No dues Certificate' at the time of retirement of the Petitioners, NHPCL cannot seek any recovery and/or stop the benefits of the medical scheme. This is an incorrect submission as the Certificate only signified that till the time of retirement and with regard to transactions until retirement between employer and employee, accounts are settled and employee does not owe anything to the employer and naturally, this Certificate cannot come in the way of transactions post-retirement. The medical scheme i.e. REHS itself provides that where retired employee has not cleared all his/her outstanding dues of the Corporation at the time of retirement or subsequently, benefits under the scheme will not be available. Petitioners are conveniently ignoring the word 'subsequently' and since in the present case, the excess payments were made subsequent to the retirements, unless the outstanding dues are paid, medical benefits cannot be granted. If the interpretation of the Petitioners is to be accepted, the expression 'subsequently' will be rendered otiose.

13. Counsel for Respondent No.1 adopted the arguments canvassed on behalf of NHPCL and supported its case.

14. Heard learned Senior Counsels for the Petitioners and NHPCL and learned counsel for Respondent No.1.



15. By this writ petition, writ Petitioners lay a challenge to Office Order No. 41 of 2020 dated 17.04.2020 and Circular dated 07.09.2020 as well as notices of recovery. Petitioners are retired employees of NHPCL and as per the details furnished in the writ petition, retired on different dates between 2008 and early 2019. Recoveries pertain to 1997 and 2007 pay structures and were sought to be made from the arrears paid to the Petitioners post their retirement, on fixation of revised pay.

16. Genesis of this writ petition lies in DPE O.M. dated 25.06.1999 revising the pay scales of Board level and below Board level posts including non-unionised Supervisors in Public Enterprises w.e.f. 01.01.1997, pursuant to recommendations of a High-Level Committee set up by the Government under Chairmanship of Justice S. Mohan. The revised pay scales were indicated in Annexure-I to the said O.M. It was provided that there will be a provision for grant of upto a maximum of three stagnation increments for those who reached the maximum of their pay scales. NHPCL issued Office Order No.3/2000 on 19/21.01.2000 implementing revised pay scales, fitment formula and DA guidelines in terms of DPE O.M. dated 25.06.1999. Under the Table providing the revised pay scales, a 'Note' was inserted indicating that revised pay scales in E-1 and E-7 grades were provisional and subject to approval from Government of India and the incumbents of these posts were required to give an undertaking in the enclosed format that in the event of any alteration/modification in the proposed revised pay scales or otherwise, as decided by the Government, the same will be implemented and necessary adjustments will be made from arrears/future salary. For stagnation increments, there was no periodicity. Relevant part of Office Order No.3/2000 is as follows:-



1. **SCALE OF PAY** : The existing scales of pay of Executives and Supervisors are revised w.e.f. 01.01.97 as detailed below :

Grade	Existing scales of pay effective from 01/01/92 (in Rs.)	Revised scales of pay effective from 01/01/97 (proposed) (in Rs.)
A. Executives		
E1	3700-175-7025	8000-225-13400 *
E2	4000-175-4875-200-7475	8600-250-14600
E2A	4500-200-5500-250-8250	10750-300-16750
E3	5650-250-6650-275-9400	14500-350-18700
E4	6600-300-9600	16000-400-20800
E5	7500-300-9900	17500-400-22300
E6	7950-300-10050	18500-450-23900
E7	9000-300-10500	20000-475-25700 *
E8	9500-400-11500	20500-500-26500
E9	11500-400-13500	23750-600-28550
B. Supervisors		
S1	2900-95-3565-105-5140	5600-150-8600
S2	3300-120-4140-135-5625	6000-160-9200
S3	3500-135-4580-150-6080	6400-180-10000

Note : * The revised pay scales (E-1 & E-7) are provisional and are subject to approval from the Govt. of India. The incumbents of these posts shall give undertaking in writing (in the enclosed format- Annexure I) that in the event of any alteration or modification in the proposed revised pay scales or otherwise as decided by the Govt. of India, the same will be implemented and necessary adjustments will be made from arrears/future salary.

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6. **STAGNATION INCREMENT** : The employees who reach the maximum of the scales of pay shall be granted upto a maximum of three stagnation increments.

17. On 04.04.2006, Ministry of Power wrote to NHPCL that it had no objection to removal of anomalies in the proposed pay scales and adoption of the revised pay scales being considered by the Board of NHPCL insofar as the range was in line with the pay scales prescribed by DPE based on recommendations of Justice S. Mohan Committee. It is explained by NHPCL that the anomaly referred to in the said letter arose in 1997 owing to faulty implementation due to difference in increment rates amongst the CPSEs in general and NHPCL, because of which NHPCL's increment was



less than 4%. To rectify this, NHPCL made a proposal to bring the increment at par with other CPSEs, i.e. at 4%.

18. In supersession of order dated 19/21.01.2000, NHPCL issued Office Order No.22/2006 dated 09.05.2006, by which modified scales of pay were prescribed and E-1 and E-7 pay scales were shown as provisional. Significantly, in para 9 with respect to stagnation increments, it was provided that if Basic Pay and Special Pay of an employee reaches maximum of the pay scale at any time during the period from 01.01.1997 to 31.12.2006, he will be allowed stagnation increments subject to the due dates falling within this period and a maximum of three increments. It was also provided that stagnation increments would be released on the anniversary date of the increment and will be paid as Stagnation Pay. Para 9 of Office Order dated 09.05.2006 is as follows:-

“9. Stagnation Increment

If Basic Pay and Special Pay of an employee reaches the maximum of the Pay Scale at any time during the period from 1.1.1997 to 31.12.2006, he will be allowed stagnation increments, at the rate of increment last drawn, on the due date of increment subject to following condition:

- i. The due date of increments should fall within the Pay revision period 1.1.1997 to 31.12.2006.*
- ii. Grant of such increments shall be limited to maximum on three occasions only, during the said pay revision period.*
- iii. Stagnation increment(s) is to be released on the anniversary date of increment and will be paid as ‘Stagnation Pay’ to be treated as Basic Pay for all purposes except for promotion benefit.”*

19. On 26.11.2008, DPE issued an O.M. for revision of pay scales w.e.f. 01.01.2007 and the revised pay scales were indicated in Annexure-I appended to the O.M. This was followed by a letter dated 30.04.2009 issued by the Ministry of Power stating that the pay revision should be in consonance with DPE guidelines and for any deviation, a proposal with



justification must be referred to the Ministry of Power to take up the matter with DPE. It was also stated that for the purpose of fitment benefit, if any extraordinary increment and/or increase in pay had been granted retrospectively, which effects the revision of pay as on 01.01.2007 and does not have approval of DPE, such increment or increase will be ignored for fitment/pay revision.

20. On 02.11.2010, an Office Order No.46/2010 was issued by NHPC to revise the pay scales w.e.f. 01.01.2007 pursuant to DPE guidelines and Presidential Directive issued by Ministry of Power vide letter dated 30.04.2009. Relevant part of the order is as follows:

“Sub: Revision of Pay Scales and Allowances provisionally in respect of Executives

In pursuance to DPE guidelines issued vide OMs dated 26.11. 2008, 09.02.2009, 02.04.2009, 22.06.2010 and Presidential Directives issued by Ministry of Power vide their letter dated 30.04.2009, it has been decided to revise the pay scales w.e.f. 01.01.2007 & allowances w.e.f 26.11.2008, provisionally, in respect of Executives and Teaching Staff in these pay scales as given at Annexure-I.

1.0 Revised scales of Pay

1.1 Existing Pay scales, the pay scales in which pay is to be reworked notionally w.e.f 01.01.1997 and the revised pay scales w.e.f. 01.01.2007 shall be as per Annexure-I

1.2 The existing structure of grades and entitlements in case of Executives shall remain the same wherever there is sharing of pay scales.

1.3 The pay of Executives on the rolls of NHPC on 31.12.2006 shall be re-worked notionally in the pay scales as at column 3 of table in Annexure-I w.e.f. 01.01.1997 to 31.12.2006 and based thereon pay shall be fixed on 01.01.2007 in the revised pay scales as at column 4 of table in Annexure-I. Other conditions regulating the pay w.e.f. 01.01.1997 to 31.12.2006 shall remain unchanged.

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3.0 Annual Increment

3.1 The rate of annual increment in the revised scales of pay shall be 3% of revised Basic Pay. The amount of each increment shall be rounded off to the next Rs.10/- (Rs. Ten). The increment due on 01.01.2007 shall be drawn in revised pay scale.



4.0 Stagnation Increment

4.1 The rate of stagnation increment will be 3% of the revised basic pay and Executives will be allowed to draw maximum three stagnation increments, one after every two year, upon reaching the maximum of the pay scale provided the Executive gets a performance rating of "Good" or above.

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21.0 As regards payments already made to employees on account of salary following modified pay scales from 01.01.1997 to 31.12.2006, there will be no payment/recovery on account of reworking of pay notionally in the pay scales with DPE increments w.e.f. 01.01.97, till further orders.

22.0. The aforesaid implementation of pay scales w.e.f. 01.01.2007 is provisional subject to approval of the Govt. On receipt of necessary approval/directives from Ministry of Power in respect of revision of pay scales and rate of increments, the same shall be dealt with accordingly. In case of recovery, if any, as per actual, after regularization, the same shall be effected. The payment shall be released after obtaining undertaking from the executives in the prescribed form attached as per Format - B by HR Department. The HR Department shall retain the undertaking in personal file of the executive and inform the Finance for release of arrear."

21. Undertakings as required at the time of pay revisions were given by the employees including the Petitioners. On 14.12.2012, DPE issued an O.M. for finalization of terms and conditions including pay fixation in respect of Board level Executives of CPSEs and relevant paragraphs are as follows:-

"5. While fixing the pay of Board level executives of CPSEs, the following points will be taken into consideration:-

i) The last pay drawn by the incumbent should have been drawn as per DPE guidelines. If any stagnation increments were given to the executive, either in 1997 or in 2007 pay revision, the same should have been granted only after reaching the maximum of the prescribed pay scale and once in two years, with a maximum of three such stagnation increments only. It may be clarified that there was no such concept of stagnation increment in 1987 and 1992 pay revisions.

ii)

iii) Increment, if any, due on 01.01.2007 should be panted first in the pre-revised scale (1997 pay revision) and only thereafter should fitment be



granted, and pay fixed in the revised scale as on 01.01.2007 (Appendix, example 10).

iv) Stagnation increment will be permissible only after reaching the maximum of the scale. As there are no fixed stages of increment in 2007 pay scales, the last increment due in a scale before reaching the maximum of the scale, may be less than 3%. Stagnation increment will be provided once after every two years, and there can be a maximum of three stagnation increments in a grade (Appendix, example 11)."

22. On 24.12.2012, DPE issued another O.M. in reference to its earlier O.M. dated 26.11.2008 which *inter alia* provided different Grades and corresponding pay scales in 2007 pay revision, noting that some CPSEs had adopted higher or different pay scales than those prescribed under 2007 pay revision for their Executives and below Board level and clarified that below Board level Executives have necessarily to be in specified Grades of E-0 to E-9 depending upon the schedule of the CPSE and while CPSE was free to recruit Executives for each Grade as per functional requirement and Rules, however, the same must be in consonance with DPE guidelines and the corresponding pay scales prescribed. On 27.12.2013, Ministry of Power informed the CPSEs that deviant pay scales fixed from 01.01.1997 shall not be regularized, however, no recovery shall be made for the excess pay drawn from 01.01.1997 onwards considering the difficulties in effecting recoveries and also considering that such recoveries may de-motivate the staff. It was stated that pay scales shall be fitted w.e.f. 01.01.2007 after correcting the aberrations in pay scales fixed from 01.01.1997.

23. On 29.01.2019, the Ministry of Power approved the proposal to regularize the adopted pay scales of below Board level Executives in four PSUs including NHPCL w.e.f. 01.01.1997 adopted pursuant to Ministry of Power's orders dated 04.04.2006 and 01.09.2006. In pursuance of this letter, pay scales were regularized by NHPCL w.e.f. 01.01.1997 vide Office Order



No.16/2019 dated 19.03.2019 as follows:-

“Sub: Regularization of pay scales of below Board level executives w.e.f 01.01.1997.

In pursuance of Ministry of Power letter F No. 2/1/2014-H.I (Pt) dated 29.01.2019, the pay scales of below Board level executives w.e.f 01.01.1997 are regularized as under:

1. The scales of pay w.e.f 01.01.1997 adopted in pursuance of the order of MOP, No.11/6/2006-DO (NHPC) dated: 04.04.2006, which was implemented, vide Part-I Office Order no. 22/2006 dated 09.05.2006 stands regularized.

2. Consequently, the provisional revised pay scales w.e.f 01.01.2007 as implemented vide O/O No. 46/2010 dated: 02.11.2010 are also hereby regularized as under:

2.1 On such regularization of pay scales, the revised pay w.e.f 01.01.2007 shall be re-fixed based on actual pay drawn in the pay scales w.e.f 01.01.1997 to 31.12.2006. Therefore, clause 1.3 of the O/O no. 46/2010 dated 02.11.2010 stands amended to the extent that the basic pay of below Board level executives on the rolls of the Corporation as on 31.12.2006 shall be fitted in the corresponding revised scales of pay as indicated in Annexure-I.

2.2 Accordingly on such regularization the “Personal Adjustment” extended w.e.f 01.01.2007 is hereby withdrawn. The other conditions regulating the pay like the fitment methodology, rate of annual increment etc. w.e.f 01.01.2007 to 31.12.2016 shall remain unchanged.

3. The revised scales of pay w.e.f 01.01.2017 which was implemented vide Part-I Office Order No. 30/2018 dated 30.05.2018 shall remain unchanged. The other conditions regulating the pay like fitment methodology, rate of annual increment etc., shall also remain unchanged. Accordingly, the aforesaid executives who were on the rolls of the Corporation as on 31.12.2016 and continued in service thereafter shall be fitted in the corresponding revised scale of pay w.e.f 01.01.2017.

This issues with the approval of the Competent Authority.”

24. Therefore, it is evident that pursuant to the directive of the Ministry of Power issued vide letter dated 29.01.2019, NHPCL regularized the pay scales w.e.f. 01.01.1997 implemented vide Office Order dated 09.05.2006, which included stagnation increments up to a maximum of three to be



released on the date of the anniversary of the increments with no mention of periodicity. Upto this stage there was no issue, but the dissonance, if I may so state, occurred when the internal Committee constituted by NHPCL vide order dated 28.06.2019, gave its report on 21.08.2019. A reading of the report shows that some representations were received from senior Executives pointing out anomalies, due to which their juniors were drawing higher pay. On the anomalies presented before it, the Committee gave its recommendations, three of which are relevant for the present case and based on the report, NHPCL issued the impugned Office Order dated 17.04.2020, relevant part of which is as follows:-

“Subject: Pay Fixation Related Issues.

On representations of executives for anomalies in Pay/Pay fixation on promotion, a committee comprising of senior officers was constituted for examining the various pay anomalies/pay fixation related issues. Based on the recommendations of the committee and approval of the CMD in this regard, it has been decided to implement the following as given under:

- 1. Promotion of Executives from Chief/Chief Engineer (E-7 grade) to the post of General Manager (E-8 grade) in the same pay scale of 51300-3%-73000 shall be treated as redesignation, thus the promotional benefit of notional increment granted if any on such redesignation from Chief (E-7) to General Manager (E-8) in the same pay scale of 51300-3%-73000 in the 2007 pay structure shall be withdrawn w.e.f 01.01.2007. Accordingly the Stagnation Increments which was withdrawn in the 2007 pay structure on such promotion shall be restored.*
- 2. Increment, if any, falling due on 01.01.2007 shall be granted first in the pre-revised pay scale (1997 pay revision) and only thereafter fitment benefit shall be granted, and pay fixed in the revised pay scales as on 01.01.2007. Accordingly clause 3.1 of Part-I Office Order No: 46/2010 dt: 02.11.2010 stands amended to above extent.*
- 3. Stagnation increment shall be granted once in two years on reaching the maximum of the pay scale in the 1997 pay structure i.e. during the period from 01.01.1997 to 31.12.2006, thus clause 9 of the of Part-I Office Order No: 22/2006 dt: 09.05.2006 shall stand amended to above extent.*
- 4. Employees who have been appointed on or after 01.01.1989 and continued in CDA pay scales, shall be placed in IDA Pay Scales*



retrospectively from the date of their initial appointment in pursuance to Part-I Office Order No: 23/90 dt:10.07.1990 & Office Order No: 12/93 dt: 19.05.1993.

Other terms and conditions of above mentioned office orders shall remain unchanged. Pay fixation of employees shall be reviewed in the light of aforesaid decisions and regulated accordingly.

This issues with the approval of the Competent Authority.”

25. This Office Order triggered recoveries vide Circular No.492 dated 07.09.2020, relevant part of which is as under:-

“Subject: Pay Anomaly Recoveries in compliance to HR Part-I O/o No. 41/2020 dated 17/04/2020

In compliance to HR office order no. 41/2020 dated 17/04/2020, pay fixation of executives has been revised and implemented from the month of April'2020 with the approval of the competent authority. Pay fixation chart of executives has been displayed on Intranet vide Finance Circular no. 489 dated 26/05/2020. On re-fixation of basic pay, the tentative arrear amount recoverable has been calculated and shown in Employee Sahaj Sewa Portal vide Finance Circular no. 491 dated 17/08/2020.

The competent authority has accorded approval for recovery of excess amount paid to executives in the following manner from active and Non-active executives:

1. Recovery from Active (On roll) Executives:

- a) Amount to be recovered first from amount payable to executives on account of PRP for F.Y. 2018-19.*
- b) Balance recoverable amount, if any, after recovery from PRP for F.Y.2018-19 will be recovered w.e.f September 2020 in 24 equal instalments or number of instalments up to retirement of employee whichever is less.*
- c) Amount of instalment will not be more than 50% of take home salary after statutory deductions.*
- d) If employee retires before completion of full recovery, the balance amount will be recovered from amount payable to employee on account of full and final settlement other than payment of Gratuity and PF.*

2. Recovery from Non-Active (Retired) Employees:

- a) Amount to be recovered first from amount payable to executives on account of PRP for F.Y. 2018-19.*
- b) Balance recoverable amount, if any, after recovery from PRP for F.Y. 2018-19 will be recovered from pending dues to them, other*



than the payment of Gratuity and PF.

c) In case where recovery is pending and no dues are payable to Non-active employees, HR Division will issue notice to all ex-employees for depositing the amount of recovery. Where the ex-employee fails to deposit the amount, HR will initiate the legal action to make recovery from ex-employees.”

26. Broadly understood, recoveries are on account of: (a) alteration in periodicity of stagnation increments from once every year to once in two years; (b) treating promotions of Executives from Chief/Chief Engineer to post of GM, both placed in the pay scale of Rs.51300-73000, as re-designation and consequently withdrawing promotional benefit of notional increment granted, if any, on such re-designation in the same pay scale and restoring the stagnation increments withdrawn w.e.f. 01.01.2007; and (c) increment, if any, falling due on 01.01.2007 to be granted first in the pre-revised scale in 1997 pay revision and thereafter, granting fitment benefit in the revised pay scale.

27. While contesting the impugned order dated 17.04.2020, Petitioners contended that assuming there was an anomaly or error in grant/fixation of increments, no recoveries can be made from the Petitioners being retired employees, in light of paragraph 18 of the judgment of the Supreme Court in ***Rafiq Masih (supra)***. Without prejudice, arguments were canvassed on the legal validity of the impugned order urging that the same was without jurisdiction and against the Presidential Directive and that the increment fixation could not be altered and at the highest the order would have a prospective effect. In rebuttal, NHPCL justified the re-fixation based on anomalies pointed out by the Internal Committee as also consequential recoveries. As for recoveries, NHPCL also placed emphasis on the undertakings given by the Petitioners at the time of pay revisions for



refunding the excess payments and underscored that both pay revisions were provisional and subject to Government approval, a fact well known to the Petitioners and reliance was placed on judgment of the Supreme Court in *Jagdev Singh (supra)* to urge that given the undertakings by the Petitioners, judgment in *Rafiq Masih (supra)*, will not aid the Petitioners.

28. The first and foremost question that needs consideration is whether Petitioners can be subjected to recoveries from the arrears disbursed to them as a result of pay revisions, in light of the judgment of the Supreme Court in *Rafiq Masih (supra)*, as admittedly, Petitioners had retired when recoveries were sought from the arrears disbursed, post retirement. Before proceeding forward, I may refer to the judgment in *Rafiq Masih (supra)* as also subsequent judgments following the principles elucidated in *Rafiq Masih (supra)*. Relevant passages from *Rafiq Masih (supra)* are as follows:

“13. First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir case [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] recognised, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, 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. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if



the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

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16. This Court in *Syed Abdul Qadir v. State of Bihar* [*Syed Abdul Qadir v. State of Bihar*, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] held as follows : (SCC pp. 491-92, para 59)

“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. The 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)

*Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in *Syed Abdul Qadir* case [*Syed Abdul Qadir v. State of Bihar*, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] , that recovery of excess payments, made from the employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of*



superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation.

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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."

(Emphasis supplied)

29. Following the judgment in ***Rafiq Masih (supra)***, Division Bench of this Court in ***Dilbagh Singh Bains (supra)*** held as follows:

"12. The judgment of the Supreme Court in the case of Rafiq Masih (supra) is very clear wherein the Supreme Court has culled out situations where the benefits cannot be recovered, the same are, as under:

"(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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."

13. *Reliance placed by the Tribunal on the judgment of Jagdev Singh (supra) is totally misplaced. In the said judgment, the Supreme Court has upheld the recovery of the excess amount that was paid to the respondents therein with a clear undertaking that any payment found to be in excess would liable to be adjusted. In fact, the Supreme Court has distinguished the judgment in the case of Rafiq Masih (supra). No such undertaking has been given by the petitioner herein at the time of grant of 2nd ACP/3rd MACP in 2005/2011 respectively. In fact, we note, no finding has been returned by the Tribunal in that regard to make the judgment of the Supreme Court in the case of Jagdev Singh (supra) applicable to the facts of this case. Rather, we find that the Tribunal has said that the impugned orders have been passed in view of the pre-audit done in the case of the petitioner while determining his pension and other retiral benefits when they found, inadvertently the petitioner was granted 2nd ACP/3rd MACP from the date prior to the date of his actual entitlement, which has been rectified by the impugned orders dated August 8, 2018 and August 28, 2018.*

14. *Suffice to state such a finding cannot be a reason for not to apply the ratio of the judgment in the case of Rafiq Masih (supra). We find that the ratio of judgment in the case of Jagdev Singh (supra) has no applicability to the facts of this case. At this stage, we may state that Mr. Birbal has made a submission that departmental proceedings were initiated against twelve employees of DDA and out of whom ten employees including the petitioner have been found guilty. Suffice to state, such a stand was not pleaded by the respondents before the Tribunal. In any case, the said aspect has no bearing on the issue decided by the Tribunal.*

15. *Upholding the action of the respondents to grant the benefit of 2nd ACP/3rd MACP from 2007/2013 respectively, it is held that the recovery that has been effected by the respondents from the retiral dues of the petitioner is illegal and is set aside. The respondents are directed to refund the amount as recovered to the petitioner minus the amount of Rs. 89,132/- (against leave encashment) within a period of eight weeks from today with interest @ 5% per annum computed from the date of recovery till the date of refund."*



30. Another Division Bench of this Court in ***Mohinder Singh Siwach (supra)***, held as follows:

“1. The challenge in this petition is to an order dated October 18, 2023 in O.A. 1650/2020 whereby the O.A. filed by the respondent has been allowed by the Tribunal by stating in paragraphs 7 to 12 as under:-

“7. The sole question to be adjudicated in this OA is whether the applicant, who got excess payment on account of wrong fixation and against whom recovery has been ordered within 5 years, can be recovered from his pensionary benefits?

8. In view of the judgment of the Hon'ble Apex Court in *Rafiq Masih (supra)*, this issue is no more res integra. The applicant's case squarely falls under clause (iii) of *Rafiq Masih's* case which states that “Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued”.

9. Admittedly, the recovery is stipulated for wrong benefit given to the applicant towards MACP way back in 2006 with effect from the date of implementation of the MACP Scheme i.e., 01.08.2009. Thus, this Tribunal has no hesitation whatsoever in observing that the applicant's case is covered by *Rafiq Masih (supra)*.

10. At this stage, learned counsel for the respondents has relied upon a decision of the Hon'ble Supreme Court in *High Court of Punjab & Haryana v. Jagdev Singh Civil Appeal No. 3500/2006* decided on 29.07.2016 wherein the Hon'ble Apex Court, while discussing the case of *Rafiq Masih*, has held that ‘the recovery of excess amount, paid to an employee, to be permissible where an employee has undertaken to refund the excess amount paid to him’. He submits that in the present case the applicant has given undertaking and hence, he is bound to refund the excess amount paid to him erroneously.

11. In view of the above decision, I do not agree with the submission of learned counsel for the respondents that the present case is not squarely covered by *Rafiq Masih's* case. Clause(iii) states that if recovery is more than 5 years old, then it is not recoverable. Even if undertaking is given, it is not recoverable as held by the Hon'ble Apex Court in *Rafiq Masih (supra)*.

12. In view of the discussion made above, the OA has got merit and the same is allowed with a direction to the respondents to refund the amount so recovered from the salary or pensionary benefits of the applicant, within a period of 120 days from the date of receipt of a certified copy of this order.”

2. The only submission made by Mr. Nitesh Kumar Singh, learned counsel for the petitioner is that the petitioners are within their power to



refix the pay of the respondent as he had given an undertaking authorizing the petitioners to recover the benefits given to him pursuant to the pay fixation. Mr. Singh on instructions states that the undertaking was given at the time of retirement.

3. *If that be so, the reliance placed by Mr. Singh on the judgment of the Supreme Court in the case of High Court of Punjab and Haryana v. Jagdev Singh, (2016) 14 SCC 267 which has been considered by the Tribunal in paragraph 10 of the judgment has no applicability to the facts of this case. In fact, we find that the Tribunal dealt with the said judgment in the following manner:-*

10. At this stage, learned counsel for the respondents has relied upon a decision of the Hon'ble Supreme Court in High Court of Punjab & Haryana v. Jagdev Singh Civil Appeal No. 3500/2006 decided on 29.07.2016 wherein the Hon'ble Apex Court, while discussing the case of Rafiq Masih, has held that 'the recovery of excess amount, paid to an employee, to be permissible where an employee has undertaken to refund the excess amount paid to him'. He submits that in the present case the applicant has given undertaking and hence, he is bound to refund the excess amount paid to him erroneously.

4. *In any case, the judgment of the Supreme Court in Jagdev Singh (supra) has no applicability to this case as in the said case the undertaking was given by the respondent therein at the time of grant of pay scale. It is not such a case here as the undertaking was given by the respondent at the time of retirement, which is much after the pay fixation was made. It necessary follows that in view of the judgment of the Supreme Court in State of Punjab v. Rafiq Masih (White Washer), AIR 2015 SC 1267, wherein the Supreme Court in paragraph 18 has held as under, we are of the view that the Tribunal is justified in allowing the O.A. in the manner it has done in paragraphs 7 to 12 of the impugned order which we have reproduced in above:-*

"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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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."*

31. Recently, the Supreme Court in ***State of Uttar Pradesh and Another v. Virendra Bahadur Katheria and Others***, 2024 SCC OnLine SC 1712, re-stated and re-affirmed the principles elucidated in ***Rafiq Masih (supra)*** as under:-

"47. Regardless to what has been held above, we are in agreement with the Learned Single Judge that the pay benefits which had been released to the writ petitioners arrayed before it, and who had meanwhile retired from service, ought not to have been withdrawn and that too with the added measure of recovery orders being fastened upon them. Such a recourse to effect recovery initiated by the State is contrary to the principles evolved by this Court in State of Punjab v. Rafique Masih (White Washer), wherein recovery from retired employees or employees who are due to retire within one year of the order of such recovery, did not get the seal of approval. Thus, to this limited context, the Single Judge's direction deserves to be upheld. Ordered accordingly."

32. Earlier in the case of ***M.P. Medical Officers Association (supra)***, the Supreme Court held as under:-

"8. It is not in dispute that the members of the appellant association, who were serving as Specialists, Dental Specialists and officers in the specialist's cadre got the benefits under the circular dated 23.05.2009. It was the Department/State, who issued the circular dated 23.05.2009 and paid the benefits under the circular dated 23.05.2009 to the members of the appellant association, which subsequently came to be withdrawn by the State in the year 2012. Therefore, as such, there was neither any misrepresentation on the part of the concerned employees - members of the appellant association nor can the mistake be attributed to them. The mistake, if any, can be said to be that of the Department/State, who issued the circular dated 23.05.2009 under which the members of the association were given certain benefits till the same was withdrawn in the year 2012. Therefore, in the peculiar facts and circumstances of the case, the State



was not justified in ordering recovery of the excess amount paid along with the interest. It is true that *stricto sensu*, the decision of this Court in the case of *State of Punjab v. Rafiq Masih*, (2015) 4 SCC 334 may not be applicable. However, at the same time, as observed hereinabove, and in the facts and circumstances of the case, the State was not justified in ordering recovery of the excess amount paid with interest, more particularly, when it is reported that some of the doctors/dentists - members of the association have retired on attaining the age of superannuation and the recovery shall be from their pension/pensionary benefits. However, at the same time, their pay fixation and the pension shall have to be as per the order dated 26.08.2008.

9. In view of the above and for the reasons stated above, all these Appeals Succeed in part. The impugned judgment and order passed by the Division Bench of the High Court upholding the recovery of the excess amount paid alongwith interest is hereby quashed and set aside.

10. In result, there shall not be any recovery of the excess amount paid pursuant to the circular dated 23.05.2009 till the same was withdrawn on 30.05.2012. However, for all other purposes including the pay fixation and pension etc., the same shall be now worked out as per the order dated 26.08.2008, as if, the circular dated 23.05.2009 was never issued.”

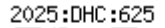
33. In ***The State of Bihar through the Principal Secretary and Others v. Yugeshwar Prasad Singh and Others***, LPA 273/2022, decided on 19.07.2024, Patna High Court held as follows:-

“9. In ***Jagdev Singh (supra)***, it was the case of recovery of excess payment made to an Additional Civil Judge, who was allowed senior pay scale under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001, wherein, the officer was required to submit an undertaking that any excess payment which may be found to have been paid, will be refunded to the Government either by adjustment against future payments due or otherwise.

10. It was in the aforesaid context that the Supreme Court in of the case of ***Jagdev Singh (supra)***, in paragraph nos.10 and 11 has held as under:-

“10. In *State of Punjab v. Rafiq Masih* [*State of Punjab v. Rafiq Masih*, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group Disposed of service).





*Supreme Court has held that the proposition enunciated in the case of **Rafiq Masih (supra)** will not be applicable therein.*

14. *In that view of the matter, we find that in the facts of the instant case, the ratio laid down in the case of **Rafiq Masih (supra)** will be applicable and not the ratio laid down in the case of **Jagdev Singh (supra)** relied on by the learned counsel for the appellant.*

15. *Under the circumstances, we find no error in the impugned judgment dated 26.03.2021, passed by learned Single Judge in C.W.J.C. No. 186 of 2020, setting aside the orders dated 06.01.2017, 13.06.2017 and 04.10.2019, issued by the Deputy Collector (Establishment), Ara relying on the ratio laid down by the Supreme Court in the case of **Rafiq Masih (supra)**, inasmuch as, the respondent nos. 1, 2 and 3/petitioners are all retired Class-III (or Grade-C) employees.”*

34. This Court, in **D.C. Murmu (supra)**, quashed and set aside the impugned order therein by which recovery was sought from retired employees relying on **Rafiq Masih (supra)** and **Dilbagh Singh Bains (supra)**.

35. From a reading of paragraph 18(ii) of the judgment of the Supreme Court in **Rafiq Masih (supra)**, there can be no debate that recovery from retired employees is impermissible in law. Recourse to effect recovery from the Petitioners who are retired employees of NHPCL will be wholly contrary to the principles elucidated by the Supreme Court in **Rafiq Masih (supra)**, wherein recovery from the retired employees or those due to retire within one year of the order of such recovery was not approved by the Supreme Court. As noted above, this principle has been recently re-stated and re-affirmed by the Supreme Court in **Virendra Bahadur Katheria (supra)**. I am unable to discern any distinction in the said judgments between a retired employee who receives excess payments sought to be recovered, after his retirement and one who received the excess payments before his retirement, a distinction ingeniously sought to be drawn by NHPCL and I may only reiterate that there is a total proscription in making recoveries from retired



employees. Drawing a distinction between the Petitioners and the Respondent in *Rafiq Masih (supra)*, basis the receipt of arrears post-retirement, will be creating a class within a homogenous class of retirees, which the Supreme Court did not recognize and would be in the teeth of the said judgment. Be it ingeminated that the proscription by the Supreme Court in *Rafiq Masih (supra)* to effect recoveries from retired employees applies only in cases where there are over or excess payments due to erroneous pay fixation, pay anomalies etc. and therefore even assuming in favour of NHPCL that the arrears were wrongly disbursed to the extent of excess payments, recoveries cannot be made from the Petitioners.

36. It also needs to be penned down that the alleged excess amounts paid to the Petitioners were not because of any misrepresentation or fraud on their part and NHPCL has, in fact, admitted that due to a *bona fide* mistake on its part, pay was fixed vide order dated 19.03.2019 overlooking the DPE O.Ms. dated 14.12.2012 and 24.12.2012. Clearly, Petitioners cannot be made liable or left to suffer due to the mistake of the officials of NHPCL and recoveries will be wholly iniquitous.

37. It needs to be highlighted that in *Rafiq Masih (supra)*, the Supreme Court has held that 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, recovery will be impermissible in law. Petitioners have taken a categorical stand in the rejoinder that recoveries at this stage from their pensions will cause immense financial hardship. Petitioners have been drawing meagre amount of pension from EPFO and annuity under superannuation Scheme from LIC. Many of the Petitioners were promoted from non-Executive category to Executive category and at a low level of



hierarchy. Many have retired as back as 15 years ago and most retired prior to 2017 revision when pay package was far from lucrative. It is also stated that the arrears were disbursed as late as in 2019 for no fault of the Petitioners but due to laxity of the Respondents to hold on to regularization of pay revisions for years together. In fact, Petitioners have suffered even on this score as the arrears due from 01.01.2007 were withheld and released after 12 years when the Ministry of Power regularized the pay revision issue of 1997 scales which were adopted and implemented in 2006 with the consent of the Ministry.

38. Petitioners have brought forth that the earliest retiree being Petitioner No.23 retired in January, 2008 with a pension of Rs.1,727/- per month and received an arrear in the sum of Rs.1.30 lacs only. In case of many Petitioners, recovery is much more than gross total arrears paid in 2019 by NHPCL and this was explained illustratively by taking the case of Petitioner No.51, who received Rs.2.61 lacs as arrear in 2019 whereas as per the impugned notice, a sum of Rs.15.74 lacs is sought to be recovered. Looking at these averments, which are uncontroverted, I am of the view that the case of the Petitioners squarely also falls under para 18(v) of the judgment in **Rafiq Masih (supra)** and it will be wholly iniquitous to permit NHPCL to effect recoveries.

39. Reliance of NHPCL on the judgment of **Jagdev Singh (supra)** predicated its case on the undertakings furnished by the Petitioners at the time of proposed pay revisions, is wholly erroneous. First and foremost, it is clear from Office Orders dated 21.01.2000 and 09.05.2006 that revised pay scales were provisional only in respect of E-1 and E-7 grades being subject to Government approval and the incumbents of these posts were required to give an undertaking to permit necessary adjustments in case of any alteration



or modification in the proposed revised pay scales from arrears/future salary. The undertakings were in the context of proposed pay revisions, which illustratively means that if any replacement scale was erroneously granted or there was any computation or calculation error while granting benefits of revised pay scales, NHPCL was at liberty to enforce the undertakings and seek refund of excess payments. It is nobody's case that there was any modification or alteration in the proposed revised pay scales in the 1997 pay structure and therefore, the undertakings cannot be enforced by NHPCL for making the alleged recoveries, which are completely in a different context. Recoveries under 1997 pay structure are sought on account of granting stagnation increments once every year. Undertakings do not relate to stagnation increments and on a factual note, there was no occasion for the Petitioners to even furnish undertakings in this regard since Office Order dated 21.01.2000 was completely silent on the periodicity of stagnation increments and only provided in para 6 that three stagnation increments will be available on reaching the maximum of pay scales. Subsequent thereto, when Office Order dated 09.05.2006 was issued by NHPCL, only E-1 and E-7 pay scales were provisional in respect of the revised pay scales and with respect to stagnation increments, it was nowhere mentioned that the same will be granted once in two years. In fact quite contrary to the stand now taken by NHPCL, it was stated in para 9 that stagnation increments will be released on the anniversary date of the increment. With these stipulations, it can hardly be argued by NHPCL that Petitioners were put to notice that they will be entitled to stagnation increments once in two years and/or the undertakings bind them so as to make them liable to refund arrears towards excess payments. Likewise, undertakings under the 2007 pay revision were also with respect to the provisional revised/replacement pay scales and there



was no alteration in the proposed pay scales, which were in fact regularised by the Ministry of Power, as proposed. Hence, the judgment in **Rafiq Masih** (*supra*) covers the case of the Petitioners and judgment in **Jagdev Singh** (*supra*) is inapplicable.

40. Recently, a Division Bench of this Court in **Ravinder Kumar v. Govt. of NCT Delhi through Chief Secretary and Others, 2024 SCC OnLine Del 8288**, has distinguished the case of **Jagdev Singh** (*supra*), in the context of an undertaking and I quote:-

“15. Mr. Singh submits that as the petitioner had himself, in his letter dated 8 September 2014, agreed for recovery of the excess payment from his GPF, the petitioner could not thereafter seek to challenge the recovery. Reliance has been placed, by Mr. Singh, on the judgment of the Supreme Court in Jagdev Singh.

16. We are unable to accept the submissions of Mr. Singh or the impugned order passed by the Tribunal.

17. Rafiq Masih is clear and categorical in its directions. There is an absolute proscription, in Rafiq Masih, from effecting recoveries from employees belonging to Group-C and Group-B services, recoveries from retired employees, recoveries from employees who are due to retire within one year or recoveries beyond five years from the date of excess payment. The petitioner was admittedly a Group-C employee. Again, equally admittedly, the recovery was being sought to be made from the petitioner within a period of one year of his retirement. As such, the recovery was straightaway hit by clauses (i) and (ii) in para 18 of Rafiq Masih.

18. The decision in Jagdev Singh, on which the Tribunal has relied and which Mr. N K Singh also presses into service is, in our considered opinion, inapplicable. The reason is apparent from para 9 of the said decision. Paras 2, 3 and 9 of the said decision may be reproduced thus:

“2. The facts lie in a narrow compass. The respondent was appointed as a Civil Judge (Junior Division) on 16-7-1987 and was promoted as Additional Civil Judge on 28-8-1997 in the judicial service of the State. By Notification dated 28-9-2001, a pay scale of Rs. 10,000-325-15,200 (senior scale) was allowed under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001. Under the Rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise.



3. The respondent furnished an undertaking and was granted the revised pay scale and selection grade of Rs. 14,300-400-18,000-300. While opting for the revised pay scale, the respondent undertook to refund any excess payment if it was so detected and demanded subsequently. The revised pay scale in the selection grade was allowed to the respondent on 7-1-2002.

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 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)

19. Thus, the Supreme Court in **Jagdev Singh** has carved out an exception to the Rafiq Masih principles only in two situations. The first situation is where there is an undertaking by the officer, at the time of initial upward revision of the officers' pay, accepting that any excess payment would be refunded by him. The second situation in which the Rafiq Masih principles would not apply is where, at the time of opting for the benefit of the revised pay scale, the employee was put on notice of the fact that future refixation or revision could warrant an adjustment of the excess payment.

20. The orders upwardly revising the petitioner's pay scale under the third MACP were passed on 10 August 2011 and, thereafter, on 24 November 2011. There is nothing to indicate that, at that time or even at any proximate time thereto, the petitioner gave an undertaking that any excess payment, if made to him, could be recovered or undertook to refund any such excess payment if made. Rather, by the order dated 3 September 2014, it was the respondents who called upon the petitioner to refund the amount of Rs. 6,13,773/- on 8 September 2014. Pursuant thereto, obviously for the reason that, if the said amount was not paid, the retiral benefits of the petitioner would be likely to be held up, the petitioner, vide letter dated 8 September 2014, agreed to pay the said amount from his GPF account.

21. There was, therefore, no undertaking by the petitioner to refund any excess payment, at the time when the pay was upwardly fixed, within the meaning of para 9 of the decision in **Jagdev Singh**.



22. Nor was the petitioner put on notice, at the time of the fixation of his pay under the third MACP, that future refixation could warrant an adjustment of any overpayment made.

23. Neither of the circumstances in which recovery of overpayment could be permitted, as envisaged in para 9 of **Jagdev Singh**, therefore, existed in the present case.

24. That being so, we are of the opinion that the case is squarely covered by clauses (i) and (ii) in para 18 of the decision of the Supreme Court in **Rafiq Masih**.

25. The impugned judgment of the Tribunal, which holds to the contrary, cannot sustain. It is accordingly quashed and set aside.

26. Any recoveries made from the petitioner are directed to be released to him within four weeks, failing which the amount would carry interest at the current GPF rates from the expiry of four weeks from today, till the date of payment.”

41. In **New Delhi Municipal Council and Another v. Naresh Verma**, 2025 SCC OnLine Del 353, the Division Bench of this Court held as follows:-

“2. We are frankly at a loss as to why the executive authorities are not able to come to terms with the judgment in **Rafiq Masih** rendered over a decade ago in 2014. It is clear, from the number of petitions, covered by **Rafiq Masih**, with which we are plagued day after day, that the decision is not palatable to the executive. It is time, however, that the executives learn to accept the law laid down by the Supreme Court, which is a constitutional mandate not only under Article 141 but also under Article 144.

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13. Category (iii) in para 18 of the judgment of the Supreme Court in **Rafiq Masih** specifically proscribes recoveries of excess payment made for a period of more than five years. We may reproduce the paragraph 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.*

14. Rafiq Masih has been followed by the Supreme Court in *Thomas Daniel v. State of Kerala*.

“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”.

15. Though the rigour of para 18 of the judgment of the Supreme Court in *Rafiq Masih* has been diluted in the subsequent judgment in *High Court of Punjab and Haryana v. Jagdev Singh*, that dilution is only in the cases falling under category (ii) which involves recovery from retiring employees. In that case, the Supreme Court has held that, if at the time when excess payment is made, the employee subscribes to an undertaking that he would agree for recovery in case the payment is found to excess, or is put on notice regarding such recovery, the **Rafiq Masih** principle would not apply.

16. As the respondent's case falls under Category (iii) in para 18 of **Rafiq Masih**, the benefit of **Jagdev Singh** would also not be available to



the petitioner.

*17. As the case is fully covered by the decision in **Rafiq Masih**, no case for interference with the impugned judgment of the Tribunal is made out.”*

42. In view of the judgments alluded to above, it is held that no recoveries shall be made from the Petitioners, even if some payments have been made erroneously and in this light, *albeit* this Court need not detain itself in determining the validity or otherwise of the impugned order dated 17.04.2020, however, since the parties touched upon some of the issues, I may briefly deal with the same, to the extent necessary.

43. Insofar as 1997 pay revision is concerned, the impugned order touches only on one aspect, i.e. grant of three stagnation increments on reaching maximum of the pay scale once in two years instead of granting the same annually. As rightly placed by the Petitioners, DPE O.M. dated 25.06.1999 was the genesis of pay revision from 01.01.1997. Following this O.M., NHPCL issued Office Order dated 21.01.2000, wherein only E-1 and E-7 pay scales were shown as provisional awaiting approval from Government of India. Para 6 of the order provided for three stagnation increments, with no mention of periodicity. Later, NHPCL issued Office Order dated 09.05.2006 in supersession thereof, where again only E-1 and E-7 scales were shown provisional and significantly para 9 thereof, as extracted above, did not provide that increments will be paid once in two years and stipulated that increments will be paid on the anniversary of the increment as Stagnation Pay. Therefore, the O.Ms./Officer Orders were completely silent on the periodicity of the three stagnation increments in the 1997 pay structure. When the Government of India regularized the pay revisions on 29.01.2019, NHPCL issued an Office Order on 19.03.2019 stating clearly that 1997 pay revision stood regularized in pursuance of



Ministry's order dated 04.04.2006 as implemented by NHPCL's order dated 09.05.2006.

44. Post passing of order dated 19.03.2019, pursuant to Presidential Directive, it is not understood how NHPCL could alter the periodicity of stagnation increments from once in a year to once in every alternate year and circuitously amend para 9 of Office Order dated 09.05.2006 to take effect from 01.01.1997, vide the impugned order dated 17.04.2020 and that too, without the approval of the Ministry of Power/DPE. Be that as may, most certainly, this chapter cannot be re-opened to initiate recoveries against the Petitioners, post their retirements.

45. Coming now to the impugned order in respect of 2007 pay structure. Three aspects touch upon 2007 pay structure in the impugned order, i.e. increment falling due on 01.01.2007; withdrawal of promotion increment from 01.01.2007 treating promotion from E-7 to E-8 grade as re-designation; and entitlement of stagnation increments once in every alternate year. Primordial stand of NHPCL is that regularization and implementation of pay scales was carried out by order dated 19.03.2019 overlooking DPE O.Ms. dated 14.12.2012 and 24.12.2012 and was a *bona fide* mistake. It is thus clear that the mistake, if any, was of NHPCL and Petitioners cannot suffer by having to refund the payments received, being retired employees and to this extent, case of the Petitioners is directly covered by the judgment of the Supreme Court in *Syed Abdul Qadir (supra)*.

46. NHPCL also contended that the DPE O.Ms. were in public domain and Petitioners cannot plead ignorance and thus ought not to have accepted the excess amounts by way of arrears. This stand of NHPCL is preposterous, to say the least. NHPCL expects Petitioners to have had the knowledge of the DPE O.Ms. and to have declined to accept the arrears in violation of the



O.Ms., with its own officials having overlooked the same. It is clear from a plain reading of the impugned order dated 17.04.2020 that the decision to treat promotion from E-7 to E-8 grade as re-designation was taken for the first time by this order, pursuant to the report of Anomaly Committee and cannot be applied retrospectively to the Petitioners, post-retirement. Even in respect of stagnation increments and fixation of increments falling due on 01.01.2007, after an afflux for over a decade, Ministry regularized the 1997 proposed pay revision and NHPCL issued order dated 19.03.2019, regularizing and implementing the 1997 pay revision and consequently the 2007 revision and disbursed the arrears. Basis the recommendations of the Anomaly Committee concerned with the anomaly flagged by some senior executives drawing lesser pay than their juniors, NHPCL passed the impugned order on 17.04.2020, re-opening several issues. The question that begs an answer is whether Petitioners who retired in the meantime can be made to suffer the impact of this decision by refunding the excess payments received by way of arrears and the answer, in my considered view, is a clear 'No'. In fact, Petitioners are also right in contending that due to an inordinate delay in finalizing pay revisions, their higher emoluments were withheld for years and they suffered financial loss and were not able to enjoy the fruits of pay revisions, at the right time. Stand of NHPCL that it is justified in initiating recoveries from the arrears, only because they were paid post-retirement and recoveries were initiated in a short span of time, is completely untenable in law as there is no such carve out of in the judgement in **Rafiq Masih (supra)**.

47. Learned Senior counsel for NHPCL had strenuously urged that this writ petition deserves to be dismissed, as similar issues had been decided by the High Court of Punjab & Haryana in **Prabhu Kumar Rawat (supra)** and



also for the reason that Petitioners did not disclose this crucial fact. There is no merit in this contention. Having read the judgment, first and foremost, most of the issues raised by the Petitioners herein, as captured above, were not raised in *Prabhu Kumar Rawat (supra)*. Secondly and most importantly, large part of the judgment concerns itself with re-fixation of pay in the context of serving employees as the Petitioners in the batch of writ petitions were a mixed bag of serving and retired employees. Insofar as the retired employees were concerned, the only finding of the Court is in the last part of the judgment, wherein the judgment in *Rafiq Masih (supra)*, is considered and it is held that this judgment was passed in exercise of powers under Article 142 of the Constitution of India which concerns the Supreme Court's equitable jurisdiction and cannot be applied without examining the facts. Moreover, the other and the important factor that weighed with the Court was that the amounts sought to be recovered were received by the Petitioners under the interim orders of the Court and therefore, Petitioners could not resist the recovery. The judgment, with the greatest respect, cannot aid the Respondents in denying the reliefs sought by the Petitioners herein.

48. Coming to the last issue of medical benefits under REHS, once this Court has returned a finding that NHPCL cannot recover the arrears paid, there is no reason why the benefits of REHS should not be restored to them. Even otherwise, this Court is not prepared to give a restrictive interpretation to Rule 3.2.3(d) of REHS as is sought to be given by NHPCL. All that the Scheme envisages is that if there are any outstanding dues of an employee at the time of retirement, he may not be entitled to the facilities under the Scheme. The outstanding dues, in my view, would be dues of the likes of house rent/electricity charges etc., which an employee defaulted in paying



while in service and cannot be construed to mean and connote recoverable amounts from arrears paid post-retirement on account of re-fixation of revised pay. The expression 'subsequently' also cannot be stretched to arrears of pay-revisions for the purpose of linking them with medical benefits under REHS. Accepting this interpretation placed by NHPCL would be dangerous and could give a leeway to NHPCL to take a position even 10 years hence that owing to some pay anomaly, recoveries are due and medical facilities/benefits under REHS, were thus liable to be stopped. The medical benefits are a part of the superannuation benefits and cannot be taken away on this erroneous interpretation. It is an uncontroverted position that all outstanding dues were cleared by the Petitioners and they were given no dues certificates on retirements.

49. In light of the aforesaid, this writ petition is partially allowed holding that no recoveries shall be made from the Petitioners pursuant to the impugned Office Order dated 17.04.2020 and Circular dated 07.09.2020. Respondents are directed to resume and restore the superannuation medical benefits under REHS including renewal of medical cards, wherever due, forthwith. It is further directed that medical re-imbursement claims of the Petitioners made during the pendency of this writ petition will be processed by NHPCL as per applicable rules.

50. Writ petition is disposed of along with pending applications. Interim order dated 06.07.2023 is made absolute.

JYOTI SINGH, J

FEBRUARY 03, 2025/B.S.Rohella/Jg