



2025:DHC:8633-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 14197/2024, CM APPL. 59405/2024, CM APPL.
15060/2025 & CM APPL. 17639/2025

EX INSP EXE HITENDRA YADAVPetitioner
Through: Mr. Rishi Bansal and Mr.
Rishabh Gupta, Advs.
versus
UNION OF INDIA & ORS.Respondents
Through: Mr. Varun Vats, SPC with Mr.
Aakash Kumar Singh, GP with Law Officer
GS Rathore CISF.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **24.09.2025**

OM PRAKASH SHUKLA, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking the following reliefs:

“(i) Issue a writ of certiorari or any other order, writ or direction of the nature thereby calling for records and quashing the impugned order dated 10.07.2024 (Annexure-P1) and impugned shows cause notice dated 05.10.2024 (Annexure-P2) both were issued by the Senior Commandant of CISF Unit, Guwahati Airport.

(ii) Issue a writ of mandamus or any other order, writ or direction of the same nature thereby directing the DG CISF to refix the pension of the petitioner at the basic pay of Rs. 64,100/- (i.e., his pay of the date of retirement).

(iii) Pass any other order in the interest of Justice.”

2. Succinctly, the facts of the present petition are that the petitioner was appointed to the post of Sub-Inspector/Executive

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through Limited Departmental Competitive Examination¹ vide Appointment Letter dated 07.07.2007 w.e.f. 16.07.2007 with initial basic pay of Rs.5,500/- under the 5th Central Pay Commission².

3. Thereafter, the petitioner sought voluntary retirement on 23.05.2024, which was provisionally accepted subject to clearance of dues and, he was relieved from service with effect from 20.06.2024. After his retirement, respondent No. 3 issued an order dated 10.07.2024 re-fixing his past basic pay and thereby lowering the same from Rs.10,230 to Rs.9,300 with retrospective effect for the entire period from 16.07.2007 to 20.06.2024. Consequently, a Pension Payment Order³ dated 11.09.2024 fixed his pension on the basic pay of Rs.60,400, whereas the petitioner asserts his correct last basic pay should be Rs.64,100.

4. Following the abovementioned retrospective revision of the basic pay, the impugned Show Cause Notice dated 05.10.2024 was issued by respondent No. 3 informing petitioner, that his basic pay had been revised for the period from 16.07.2007 to 20.06.2024 and that the petitioner had received an excess amount of Rs.7,22,116. Hence, the recovery of the alleged excess amount was proposed.

5. Aggrieved by these actions, the petitioner has filed the present writ petition challenging the re-fixation of basic pay order dated 10.07.2024, the consequent pension fixation vide PPO dated 11.09.2024, and the proposed recovery in the Show Cause Notice

¹ "LDCE" hereinafter

² "CPC" hereinafter

³ "PPO" hereinafter



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dated 05.10.2024.

6. The learned counsel for the petitioner submits that his employer–employee relationship ceased to exist upon his retirement w.e.f. 20.06.2024, and therefore, the respondents cannot retrospectively reduce his basic pay after his retirement. In support, the counsel relies on the decision of the Hon’ble Madras High Court in ***R. Rajamani v. State of Tamil Nadu & Ors., W.P. (MD) No. 9989 of 2024***⁴, wherein under similar facts, it was held that a Government Order cannot override any statute governing service conditions of employees.

7. It is further urged that the Show Cause Notice dated 05.10.2024 issued by Respondent No. 3 is contrary to the law laid down by the Hon’ble Supreme Court in ***State of Punjab & Ors. v. Rafiq Masih (White Washer)***⁵, wherein explicit guidelines were framed restricting employers from recovering excess payments from employees. The petitioner emphasizes that he has already retired from service, and the alleged excess payment pertains to a period spanning around 17 years, making such recovery impermissible. Reliance is also placed on the decision of a Division Bench of this Court in ***Jawahar Lal Deka v. Union of India & Ors.***⁶, wherein a similar issue was decided in the light of the guidelines laid in ***Rafiq Masih*** (supra).

8. Per contra, the respondents contend that the petitioner’s pay was

⁴ 2024 SCC OnLine Mad 9957

⁵ (2015) 4 SCC 334

⁶ 2024 SCC OnLine Del 5717



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initially fixed at Rs.5,500/- as per the Appointment Letter dated 07.07.2007, which was revised due to implementation of the 6th CPC which came in effect from 01.01.2006. The basic pay was multiplied by a factor of 1.86, resulting in revised pay of Rs.10,230/- plus a Grade Pay of Rs.4,200/- with effect from 16.07.2007. It is submitted that this fixation was not in accordance with the 6th CPC Notification dated 29.08.2008, wherein Part-A, Section-II specifically prescribes that the Entry Pay for direct recruits appointed on or after 01.01.2006 to the post of Sub-Inspector/Executive is to be fixed in Pay Band-2 (Rs.9,300-34,800) with a Grade Pay of Rs.4,200/-. The respondents assert that this provision squarely applies to the petitioner and, therefore, his basic pay was duly revised in accordance.

9. The respondents further contend that while verifying the petitioner's pay fixation at the time of preparing his pension papers it was discovered that his pay had been wrongly re-fixed at the time of his appointment as Sub-Inspector/Executive through LDCE w.e.f. 16.07.2007. Unlike his batchmate, one Shri Sadanand Tiwary, whose last basic pay stood at Rs.60,400/-. It was contended that the petitioner had wrongfully been granted two additional increments and was drawing a pay of Rs.64,100/-. This error resulted in an excess payment of Rs.7,22,116/- up to his retirement, in pursuance of which the impugned Show Cause Notice dated 05.10.2024 was issued to recover the same. The counsel submits that his pay was re-fixed to duly align the same with that of his batchmates. Consequently, his PPO was issued on 11.09.2024. The respondent further contends that **Rafiq Masih** (supra) decision cannot be applied to the petitioner as he falls under the Group 'B' since he has been appointment to the rank of Sub-

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Inspector/Executive through LDCE in 2007 and he voluntarily retired from service on 20.06.2024.

10. Having considered the submissions of the learned counsel for the parties and perusal of the record, the present case is squarely covered by the judgement of the Hon'ble Supreme Court in the case of **Rafiq Masih**(supra), the relevant parts of which have been extracted hereinbelow:

“12. 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.”*

11. From the aforesaid, it is evident that the Hon'ble Supreme Court, while outlining circumstances wherein recovery of excess payments from employees may not be permissible, observed that it is not possible to describe all such situations. Although, recoveries from Group 'C' and 'D' employees were specifically noted as likely to



cause hardship, the Hon'ble Court, however, did not exclude the possibility of hardship in the case of Group 'A' or Group 'B' employees. Further, referring to point (iii) of Para 12 in **Rafiq Masih** (supra), which clearly stipulates that recovery may not be allowed where the excess payment has continued for more than five years.

12. In this context, it is also relevant to refer to the observations of the Division Bench of this Court in the case of **Jawahar Lal Deka v Union of India** (supra), where a similar issue was considered. The relevant extract of their observations is set out below:

"9. A bare perusal of the aforesaid extracts of this decision shows that in this decision the Apex Court, while setting out some of the circumstances where recoveries for excess payment made to an employee would not be permissible, had categorically observed that it would not be possible to lay down all the situations where recoveries from employees ought not to be made. Even though recoveries sought to be made from Group C and Group D employees has been categorised as one of the cases of hardship, this does not imply that recoveries in case of Group B and Group A employees can never cause hardship. In fact, what emerges is that by way of clause (iii) of para 18, the Apex Court has, without referring to any category of employee, clarified that recovery of excess amount would not be permissible in a case where the payment has been made for more than a period of five years. In the present case, the recovery sought to be made from the petitioner admittedly pertains to payment made to him for a period of almost 18 years. This, in our view, would certainly qualify as a case of grave hardship to the petitioner, who was at the verge of superannuation, when the impugned order was passed."

13. It is also relevant to refer to the observations of the Hon'ble Supreme Court in the case of **Jagdish Prasad Singh v. State of Bihar**⁷, which underscore the principle that once the employer-employee relationship has ended, no departmental action or retrospective reduction in pay can be validly initiated against a retired



employee. The relevant parts of the same have been extracted hereinbelow:

“20. Without prejudice to the above findings, we are of the view that no departmental action could have been initiated by the State against the appellant after eight years following his superannuation because the employer employee relationship had come to an end after the appellant’s superannuation...”

“21. We firmly believe that any decision taken by the State Government to reduce an employee’s pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir and Others v. State of Bihar and Others¹, this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the Syed Abdul Qadir(supra) are extracted hereinbelow: -

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

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong



interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.””

14. In the present case, the respondents’ contention that the decision in **Rafiq Masih** (supra) is applicable only to Group ‘C’ and Group ‘D’ employees is without merit. In our view, the principles laid down in **Rafiq Masih** (supra) are equally applicable to the petitioner, particularly in light of the fact that the alleged excess payment was made over a period of around 17 years. Allowing recovery of such amounts at this belated stage would cause grave hardship to the petitioner, who has already voluntarily retired from service. Moreover, the impugned orders for refixing the pay and the Show Cause Notice were issued after the petitioner’s retirement, when the employer–employee relationship had already ceased. The respondents, therefore, could not lawfully reduce the petitioner’s basic pay with retrospective effect after his retirement, when the petitioner is no longer under the employment of the respondent. Under these circumstances, recovery at this stage would be unjust and hence, cannot be allowed.

15. It is evident that the excess payment to the petitioner has been continuing since 2007, and the issue was only raised post-retirement, when the petitioner had already ceased to be in the employment of the respondents. In this context, the principles laid down in **Rafiq Masih**



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(supra) are clearly applicable. The Hon'ble Supreme Court in that case held that recovery may not be permissible where the excess payment has been made over a period exceeding five years, regardless of the employee's category, particularly when recovery is sought after the employee's retirement.

16. While the respondents contend that the decision pertains to Group 'C' and 'D' employees, the Apex Court did not preclude the application of these principles to Group 'B' employees, and the Division Bench in *Jawahar Lal Deka* (supra) has affirmed that long-standing payments constituting a considerable period prior to retirement may amount to grave hardship, rendering recovery impermissible. In any case, it is not the case of the respondents that the pay-scale was wrongly fixed or was now correctly fixed with retrospective effect, for act and/or omissions on the part of the petitioner. It is the respondents who defaulted and as such this court cannot permit them to take advantage of their own default, especially at this belated stage, when much water has flown under the bridge. In any case, the justification furnished by the respondents for reducing the basic pay was that the same had been wrongly fixed initially and that the position had continued for about 17 years, after which it was decided to rectify the mistake. The same falls foul of the proposition propounded by the Hon'ble Supreme Court in *Bhagwan Shukla v Union of India*⁸.

17. It is also pertinent to refer to the decision in *Jagdish Prasad* (supra), wherein the Hon'ble Supreme Court held that no departmental action, including reduction of pay or recovery of amounts, could be



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initiated against a retired employee once the employer–employee relationship has ceased.

18. As a sequitur, this Court is of the view that the respondents cannot retrospectively reduce the basic pay of the petitioner or make recovery binding upon him especially after cessation of employment as to do so, would impose grave hardship on the petitioner and be inequitable. The excess payment, having continued for nearly 17 years, falls squarely within the category of cases where the law recognizes that recovery cannot be enforced.

19. In view of the above, the impugned order dated 10.07.2024 passed by the respondent No. 3 wherein the basic pay of the petitioner was reduced from Rs 10,230 to Rs 9,300, w.e.f., 16.07.2007 and the impugned Show Cause Notice dated 05.10.2024, also issued by the respondent No. 3 wherein recovery of amount Rs.7,22,116/- was ordered against the petitioner is illegal and is hereby set aside. The DG CISF is directed to revise the PPO dated 11.09.2024 at the basic pay of Rs.64,100/-, i.e., the petitioner's pay on the date of retirement.

20. Accordingly, the writ petition is allowed. Pending applications, if any, stand disposed of.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

SEPTEMBER 24, 2025/pa

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