



2025:DHC:397-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 17921/2024, CM APPLs. 76253/2024 & 76254/2024****UNION OF INDIA & ORS.**

.....Petitioner

Through: **Ms. Suruchi Mittal, Adv.**

versus

SHRI SIHOR RAM EX SSE GROUP C

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****JUDGMENT (ORAL)**

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17.01.2025**C. HARI SHANKAR, J.**

1. This is yet another case which is covered by the judgment of the Supreme Court in *State of Punjab v Rafiq Masih*¹, and which has been dragged to this Court.

2. The respondent was appointed as Technician in the grade of ₹ 950-1500 on 15 October 1989. He was promoted as Fitter in the grade ₹ 1200-1800 w.e.f. 1 August 1996 and further as Junior Engineer in the grade of ₹ 5000-8000 w.e.f. 7 January 1998 and SSE in the grade of ₹ 6500-10500 w.e.f. 28 March 2008, which was further reversed to the Pay Band of ₹4600/-. He superannuated on 31 July 2018. At the time of fixation of his pension, his basic pay was reduced from ₹



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66,000/- as shown in the pay slip issued on 31 July 2018 to ₹ 64,100/-, without issuing him any show cause notice. This reduction was predicated on the ground that the pay of the respondent had been erroneously fixed on 7 January 1999 at ₹ 5150/- instead of ₹ 5000/-.

3. It is nobody's case that the respondent was complicit or responsible in any way for the erroneous fixation of his pay in the grade of JE-II on 7 January 1999.

4. Consequent on the aforesaid re-fixation, an amount of ₹ 1,87,083/- was recovered from his Death-cum-Retirement Gratuity.

5. Aggrieved thereby, the respondent approached the Central Administrative Tribunal² by way of OA 2038/2020.

6. Following the judgment of the Supreme Court in **Rafiq Masih**, the Tribunal has, by the impugned judgment dated 9 April 2024, allowed the OA and directed return of the recovery effected from the respondent.

7. The issue in controversy is no longer *res integra*. We need only refer to para 18 of the judgment in **Rafiq Masih**, which was subsequently followed by the Supreme Court in **Thomas Daniel v State of Kerala**³:

Para 18 of **Rafiq Masih**

² "the Tribunal" hereinafter

³ 2022 SCC OnLine SC 536



“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.”

Para 9 of *Thomas Daniel*

“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



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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.”

8. The only exception to the *Rafiq Masih* principle is to be found in the judgment of the Supreme Court in *Jagdev Singh v High Court of Punjab and Haryana*⁴ in a case in which, at the time of fixation of the pay, the employee either subscribes to an undertaking that he is agreeable to recoveries being made in the event of the fixation being found to be erroneous, or was put on notice that such recovery would take place. Neither of these conditions apply in the present case.

9. The case squarely comes under clauses (i), (ii) and (iii) of para 18 of *Rafiq Masih*.

10. As such, there is no merit in this writ petition, which is accordingly dismissed in *limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 17, 2025/aky

Click here to check corrigendum, if any