



2025:DHC:374-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 839/2025, CM APPLs. 4121/2025, 4122/2025 &
4123/2025

NEW DELHI MUNICIPAL COUNCIL
AND ANR

.....Petitioners

Through: Mr. Siddhant Nath, Adv.

versus

NARESH VERMA

.....Respondent

Through:

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

ORDER (ORAL)

22.01.2025

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C. HARI SHANKAR, J.

1. This is yet another case covered by the judgment of the Supreme Court in *State of Punjab v Rafiq Masih*¹ one of the many of which clog the docket of this Court on a daily basis.

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,

¹ (2015) 4 SCC 334



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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.

3. Nonetheless, these petitions continue to be filed and we continue to have to pass orders disposing them off.

4. The respondent joined the services of the New Delhi Municipal Council² as Assistant Engineer (Electrical) on 10 July 1991. He was promoted as Executive Engineer and regularized in the said post on 13 March 2008. He was subsequently promoted as Superintendent Engineer with effect from 22 August 2014. An earlier order dated 6 April 2010 whereby the respondents' pay had been fixed with effect from 28 August 2009 was superseded by the respondents by an order passed nearly ten years thereafter on 25 March 2019. This latter order sought to re-fix the pay of the respondent, fixed by order dated 6 April 2010. Needless to say, this re-fixation was downward, with the scale of ₹ 53820/- p.m. with grade pay of ₹ 8900/-, fixed by order dated 26 April 2010, being revised to ₹ 51530/- p.m. with grade pay of ₹ 6900/-.

5. On the basis of the said re-fixation, the petitioner also chose to effect recoveries, by order dated 25 March 2019, of the alleged over payment made by the respondent, consequent on the order dated 6 April 2010. The order dated 25 March 2019 reads thus:

“Emp. Code No. 268426

² “NDMC”, hereinafter



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Supvr. No. 070220

NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI
ELECT. ESTT. UNIT-1

No.SO.(Estt.)/57/EA-VIII

Dated:25/3/19

OFFICE ORDER

In pursuance of office order no. 6575/SA-III(SO(Estt)/2017 dt. 28.12.17, the office order no. 1870/SA-III dt. 1.4.11 issued earlier is withdrawn and fixation of pay in the revised pay structure on promotion after 1.1.06 under Rule 13(1) of the CCS(RP) Rules 2008 and DTL (RP) Rules, 2009 regulates fixation of pay of employees on promotion on or after 01.01.2006. As per this provision, the pay on promotion is to be fixed by granting one increment equal to 3% of the sum of the pay in the Pay Band and the existing Grade Pay rounded off to the next multiple of 10 or minimum Pay band. Accordingly, the pay of Sh. Naresh Verma, SE(E) after granting the 2nd TBPS in the scale of ₹ 37400-67000 + ₹ 8900/- Grade pay is re- fixed in supersession of o.o. no. 768/EE-I/EA-1 dt. 6.4.10 is as under:

Exiting pay:- ₹39130/- in the pay scale of ₹19000- 39100+ ₹ 8900 GP as on dated 28.08.09	Pay fixed in the revised pay band of ₹ 37400-67000+ (G.P. ₹ 6900/-
Due date of 2 nd TBPS 28.08.09	₹ 37400+ ₹ 8900 Grade pay w.e.f. 28.08.09
	₹ 38790+ ₹ 8900 Grade pay.w.e.f.1.7.10
	₹ 40220+ ₹ 8900 Grade pay w.e.f. 1.7.11
	₹ 41700+ ₹ 8900 Grade pay w.e.f. 1.7.12
	₹ 43220+ ₹ 8900 Grade pay w.e.f.1.7.13
	₹ 44790+ ₹ 8900 Grade pay w.e.f.1.7.14
	₹ 46400+ ₹ 8900 Grade pay w.e.f. 1.7.15
	₹ 48060+ ₹ 8900 Grade pay w.e.f. 1.7.16
	₹ 49770+ ₹ 8900 Grade pay



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	w.e.f. 1.7.17
	₹ 51530+ ₹ 8900 Grade pay w.e.f. 1.7.18

The above pay fixation is subject to the condition that the individual concerned will have to refund the Council any amount on subsequent audit/check, found to have been paid in excess.

Copy to:-
1.Individual
2.SO(CBS)

Sd/-(25/3/19)
Deputy Director(Elect)”

6. The respondent moved the Central Administrative Tribunal³ by way of OA 1852/2021, challenging the re-fixation of his pay as well as the recoveries consequent thereto.

7. The Tribunal has, by the impugned order dated 20 February 2024, upheld the re-fixation of the respondent's pay but has held the recovery not to be permissible in view of the judgment of the Supreme Court in *Rafiq Masih*.

8. The respondent has not chosen to challenge the impugned judgment of the Tribunal. Ergo, on the aspect of recovery, the judgment of the Tribunal is final.

9. The NDMC has, however, assailed the judgment of the Tribunal in so far as it quashes the decision to effect recoveries from the respondent.

10. We have heard Mr. Siddhant Nath, learned counsel for the

³ “the Tribunal”, hereinafter



NDMC.

11. In this case, the Tribunal has granted relief to the respondent only with respect to recoveries effected from him.

12. Clearly, the recovery was effected nearly 10 years after the alleged excess payment was made.

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*⁴.

“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*⁵, 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

⁴ 2022 SCC Online SC 536

⁵ (2016) 14 SCC 267



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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.

18. The writ petition is accordingly dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 22, 2025

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[Click here to check corrigendum, if any](#)