



2025:DHC:2921-DB



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

+ W.P.(C) 407/2017

SUB-INSPECTOR (MIN) DEOVERT

UPADHYAY & ORS.

.....Petitioners

Through: Ms. Eshna Kumar and Mr. M.
Poudivwibou, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Monika Arora, CGSC with
Ms. Anamika Thakur, Mr. Subhrodeep Saha
and Mr. Prabhat Kumar, Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

22.04.2025

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C. HARI SHANKAR, J.

1. The issue in controversy in this case is brief, and no detailed allusion to facts is necessary.

2. The pay of the petitioners, who were then working as Assistant Sub Inspector¹ in the Central Industrial Security Force², was stepped up, under FR 27, to be at par with their juniors, by order dated 16 September 1990. The respondent was also directed to be granted financial benefits under the Assured Career Progression Scheme³ w.e.f. 16 September 2002, reckoning his date of appointment as 16

¹ "ASI", hereinafter

² "CISF", hereinafter

³ "ACP Scheme", hereinafter



September 1990.

3. However, subsequently by order dated 9 June 2016, the respondents re-fixed the petitioners' pay and change their date of appointment from 16 September 1990 to 31 October 1991. This was apparently on the ground that owing to some administrative lapse, erroneous benefits under FR 27 have been given to the petitioners.

4. It is an admitted position that, before doing so, no notice was issued to the petitioners at any point of time.

5. Subsequently, by order dated 25 October 2016, the respondents also directed recovery, from the petitioners, of excess amounts allegedly paid to the petitioners.

6. Aggrieved thereby, the petitioners have approached this Court by means of the present writ petition.

7. We have heard Ms. Eshna Kumar, learned Counsel for the petitioners and Mr. Subhrodeep Saha, learned Counsel for the respondents.

8. Ms. Kumar invokes the decision of the Supreme Court in *State of Punjab v Rafiq Masih (White Washer)*⁴, para 18 of which read thus:

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments

⁴ (2015) 4 SCC 334



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, summaries 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.”

9. We may note, for the sake of completion, that the rigour of para 18 of *Rafiq Masih* stands diluted only in two situations. The first where there is an undertaking provided by the officer concerned at the time when the pay was upwardly fixed, agreeing to recovery if the pay is re-fixed at a later point of time. The law in this regard is to be found in the following passages from the judgment in *High Court of Punjab and Haryana v Jagdev Singh*⁵:

“9. The submission of the respondent, which found favour with

⁵ (2016) 14 SCC 267



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.

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

10. The second exception is to be found in *Thomas Daniel v State of Kerala*⁶, which holds that where the excess pay has been given to the officer, owing to some wilful act on the part of the officer concerned, or whether he has drawn higher pay in full knowledge of the fact that he is not entitled to it, recovery would be permissible.

11. The Supreme Court has held, in *Bhagwan Shukla v UOI*⁷, that no downward fixation of pay of an officer can be undertaken without putting the officer on notice.

12. In that view of the matter, it is clear that the order dated 9 June 2016, whereby the petitioners’ pay was downwardly fixed, 16 years after it had been upwardly fixed from 16 September 1990, without

⁶ 2022 SCC OnLine SC 536

⁷ (1994) 6 SCC 154



issuing any notice to the petitioners, cannot sustain in law. It is accordingly quashed and set aside. This would, however, not preclude the respondents from proceeding in this regard in accordance with law, if so advised. Needless to say, should the respondents take any action in that regard, it would be with due opportunity to the petitioners and petitioners' remedies in that regard would also stand reserved.

13. This, however, pertains only to the aspect to re-fixation of pay. In so far as recovery is concerned, the case is fully covered by the judgment of the Supreme Court in *Rafiq Masih*. As the recovery has been effected in respect of alleged over payment more than 5 years prior to the date of order of recovery, it cannot sustain in law. Accordingly, the order dated 25 October 2016, directing recovery from the petitioners is quashed and set aside. In case, any amount has been recovered from the petitioners, the respondents shall ensure that it is returned to the petitioners within a period of four weeks, failing which the amount shall carry interest at the rate of 12% per annum.

14. The writ petition is disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 22, 2025/aky

Click here to check corrigendum, if any