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

% Judgment delivered on: 13.05.2024

\+ W.P.(C) 9265/2019 & CM APPL. 38194/2019

MR. SANJAY KUMAR ….. Petitioner

versus

HANS RAJ COLLEGE AND ANR. …..Respondent

**Advocates who appeared in this case:**

For the Petitioner: Mr. Ankur Das and Mr. Gautam Swraup, Advocate.

For the Respondent: Mr. Rajesh Gogna, Advocate for R-1

**CORAM:**
**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**JUSTICE TUSHAR RAO GEDELA, J. (ORAL)**

**[ The proceeding has been conducted through Hybrid mode ]**

1. This is a petition under Article 226 of the Constitution of India, *interalia*, seeking the following reliefs:-

> *"A. Issue a writ of Certiorari to or any other writ/order/direction in the nature of a Certiorari to quash the Impugned Notices dated 14.02.2019 and 15.05.2019 of Respondent no. 1 seeking recovery of Rs. 7,62,750 and directing the Respondents to cease and desist from seeking any refunds from the Petitioner for emoluments which were received from*

*the period of 10.08.2009 to 09.08.2012;*

*B. Issue a writ of Mandamus or any other writ/order/direction in the nature of a Mandamus directing the Respondent No. 1 to return the amount of Rs.30,000 which was wrongfully acquired by the Respondent No. 1 in pursuance of their order of recovery to the Petitioner.*

*C. Issue a Writ of Mandamus directing the Respondents to take no further steps towards recovery of the alleged sums and to take no coercive or disciplinary measures against the Petitioner in respect of the said Impugned Notices and/or alleged recoveries."*

*2.* In the year 1984, the petitioner had joined the English Department of Hansraj College-respondent no.1 as a Lecturer and has been serving for the last 35 years. At the moment, it is submitted that the petitioner continues to serve as an Associate Professor in the English Department of respondent no.1-Hansraj College.

*3.* The petitioner had taken a study leave from 10.08.2009 through till 09.08.2012 which was sanctioned by the respondent no.1. Petitioner asserts, since the period of study was sanctioned by the petitioner and he continued to be under the full employment of the respondent no.1, he was as such entitled to all pay and emoluments.

4. It is stated that on 18.06.2013, the Comptroller & Auditor General (CAG) published the Audit Report/Letter wherein assessment was made in respect of the excess emoluments paid to employees of respondent no.1. It is stated that copy of the said report was not available in the public domain and neither the petitioner nor any employee of the respondent no.1 was aware of any such report. While

the things stood thus, on 02.03.2016, the DoPT had issued an OM in respect of recovery of excess emoluments transferred to employees which was notified in the light of the decision of the Supreme Court in ***State of Punjab & Ors. Vs. Rafiq Masih (Whitewasher)*** reported in **(2015) 4 SCC 334.**

5. It is further the case of the petitioner that on 28.02.2017 and 07.03.2017, the Executive Council of Delhi University had recorded in the Minutes of Meeting that the DoPT's aforesaid OM is to be made applicable to the employees of respondent university and its colleges.

6. It is asserted that even thereafter, the petitioner was never communicated of any lapses in payments made to him or any demand for recovery thereof.

7. After about passage of 7 years from the said report of the CAG, by the letter dated 14.02.2019, the petitioner was called upon to pay a sum of Rs.1,66,528/- which is alleged to be excess payment made to the petitioner towards the Travel Allowance between 10.08.2009 to 09.08.2012. Subsequently, by the email dated 15.05.2019, the Accounts Department of respondent no.1 sought to recover a sum of Rs.4,69,734/- which were claimed to be excess payments made towards House Rent Allowance during the period August, 2009 to August, 2012. The said demand letter was based on the CAG's Report dated 18.06.2013.

8. Despite the representation made by the petitioner, the respondent no.1 did not waive or withdraw the said demand notices.

Finally by letter dated 29.05.2019, the respondent reiterated their demand of Rs.7,62,750/- towards excess payments made to the petitioner. Hence, the petitioner was constrained to file the present writ petition.

9. Mr. Das, learned counsel for the petitioner submits that it is the case of the petitioner that there is neither misrepresentation nor any fraud that was played by the petitioner which prompted the respondent-college to make any excess payments as alleged now.

10. It is also the contention of the petitioner that it is only on account of the letter of the Comptroller and Auditor General dated 13.08.2019 stating that certain irregular payments have been made to the petitioner and other employees, that the respondent No.1 now, after a passage of seven years sought recovery vide the impugned notices dated 14.02.2019 and 15.05.2019.

11. Learned counsel submits that the case of the petitioner is squarely covered by the judgment of Supreme Court in the case of ***State of Punjab & Ors. vs Rafiq Masih (Whitewasher)*** reported in **(2015) 4 SCC 334.**

*12.* According to the learned counsel for the petitioner, sub para (3) of para 18 of the judgment of the Supreme Court in ***Rafiq Masih (Supra)*** would squarely cover the petitioner within its ambit and as such, any excess payment made but demanded after the passage of 5 years would be impermissible to recover. Even otherwise, learned counsel for the petitioner submits that the impugned demand notices

do not relate to any mis-representation or fraud having been played by the petitioner and as such, the petitioner falls within the ambit of ***Rafiq Masih (Supra).***

13. *Per contra,* Mr. Gogna, learned counsel appearing for the respondent no.1-college submits that it is only on the account of CAG Audit Report that the respondent had initiated this action. He submits that the remuneration paid to the petitioner, which also included HRA and Travel Allowance, is purely public money which needs to be recovered.

14. Mr. Gogna also submits that there is no justification given by the petitioner in the entire petition as to how the HRA and TA is justifiable as per the ratio of ***Rafiq Masih (Supra)***. Mr. Gogna submits that the consideration before the Supreme Court in that particular case was in respect to class-IV employees and as such, the present petitioner being an Associate Professor earns a handsome amount and as such, is not in the same situation.

15. Moreover, according to Mr. Gogna, in case **Rafiq Masih** (Supra) is made applicable, sub para (5) of para 18 of the judgment would actually be applicable in the present case and not sub para (3). He submits that the College is a Constituent of the Delhi University and though it may fall within the ambit of State, the rigors of State to follow the dicta of ***Rafiq Masih (Supra),*** could not be made applicable to the College itself, being dependant on public funds.

*16.* Mr. Gogna also invites attention of this Court to Annexure R-1

filed with the counter affidavit, particularly at page 91 whereby the CAG had particularly pointed out to the irregular payment of TA and HRA in respect of the petitioner as also other employees to submit that the payment which was irregularly made, and to which the petitioner was not entitled to, cannot be stated to be covered by the judgment of Supreme Court in ***Rafiq Masih (Supra).***

17. In rebuttal, learned counsel for the petitioner submits that admittedly, even in the demand notices, there is no mention that there was any misrepresentation or fraud played by the petitioner and as such, the justification sought from the petitioner may not be entirely correct.

18. Learned counsel relies upon the judgment of Coordinate Bench of this Court in ***Renu Gupta Vs. University of Delhi & Anr***. reported in **2015 SCC Online Del 13866** to submit that in an identical case, that too regarding study leave, the learned Coordinate Bench had restrained the respondent college therein from recovering the amount of salary paid to the petitioner during the period of study leave. Moreover, learned counsel submits that in the present case, the petitioner is on a better footing, inasmuch as the petitioner had proceeded on study leave and had successfully completed his doctorate and as such, every day of study leave is justified and as such, the payment made during the period of study leave is fully justified even otherwise.

19. This Court has heard the arguments of Mr. Das, learned counsel

for the petitioner as also Mr. Gogna, learned counsel for the respondent no.1-college.

20. The issue raised in the present petition lies in a very narrow compass, in that, whether the respondent no.1 is entitled to recover the alleged excess payments made to the petitioner in the course of his regular service. The said issue on the face of it is no more *res integra* in view of the ratio laid down by the Supreme Court in ***Rafiq Masih (Supra)*** in particular, the entire conspectus of the judgment was postulated in para 18 which is as under:-

> *"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."*

The aforesaid ratio has been reiterated by the Supreme Court in ***Thomas Daniel vs. State of Kerala and Others*** reported in **2022 SCC OnLine SC 536.**

21. According to Mr. Gogna, the said judgment primarily covered employees belonging to class III and Class IV service (Group C and Group D service) and not employees like the petitioner.

22. According to Mr. Gogna, the petitioner was a highly paid and well educated employee and as such, cannot be treated to be equally placed like the petitioners before the Supreme Court in ***Rafiq Masih (Supra).*** Mr. Gogna submits that in the case of ***Rafiq Masih (Supra),*** there were class IV employees, like drivers, washman etc., in respect of whom the Supreme Court had carved out an exception. However, in respect of the employees like the petitioner who are receiving very high salaries and are themselves highly educated, cannot form part of the exception that was carved out for such Class III and Class IV employees by the Supreme Court. Moreover, the other argument of Mr. Gogna was predicated on the CAG Report dated 18.06.2013 according to which, the CAG had given a detailed assessment of the excess payments made by the college to the various employees in respect of irregular payment of TA and Earned Leave etc.

23. This Court has examined the arguments addressed by both the parties in the context of law as developed, reiterated and postulated by the Supreme Court in ***Rafiq Masih (Supra)*** and ***Thomas Daniel (Supra)***.

24. No doubt that the petition before the Supreme Court dealt with employees belonging to class III and class IV services and so far as they were concerned, there was a complete embargo on recovery of any sort. However, the guidelines which have been laid down in para 18 (iii) and (v) could be made applicable to the employees other than class III and class IV too. If one were to consider sub para (iii) of para 18, it is clear that the Supreme Court had stipulated the time period, beyond which the money could not be recovered from the employees. The said stipulation was a period in excess of 5 years from the date of the order of recovery.

25. In the present case, admittedly, the recovery orders were passed on 14.02.2019 and 15.05.2019 which is clearly beyond the five years stipulated period above. These recoveries contemplated the period from w.e.f. 10.01.2009 to 09.08.2012. This is clearly beyond five years as stipulated. In fact the recoveries are sought to be made after a passage of 7 years.

26. Coming to the sub para (v) of para 18, the Supreme Court stipulated that in other cases where the Court would arrive at a conclusion that recovery made from such employee would be iniquitous or harsh or arbitrary to such extent, as would far outweigh

the equitable balance of the employer's right to recover, this Court could possibly pass orders quashing such recovery.

27. In the present case, such an issue may not arise, however, it is apparent that the initial payments which were made were neither on mis-representation nor on any fraud played by the petitioner upon the respondent-college which led the respondent no.1 to release such excess payments. The payments aforesaid were released in the due course of the services of the petitioner while in employment of respondent no.1.

28. However, so far as the issue of recovery of Travel Allowance is concerned, petitioner admittedly, during the relevant time was on study leave and as such, the said amount was not payable at that moment of time. Moreover, no rule has been pointed before this Court to indicate that the petitioner was entitled to such TA during the period of sanctioned study leave or otherwise.

29. However, the said issue also automatically gets covered in sub para (iii) of para 18 of the judgment of ***Rafiq Masih (Supra)***.

30. This is not to say that in an appropriate case, the respondent-college or any other department of the government would not be entitled to make any such recovery, if the exceptions carved in the judgment of Supreme Court in ***Rafiq Maish (Supra)*** does not apply to the facts of that case.

31. In that view of the matter, the present writ petition succeeds. The impugned recovery notices dated 14.02.2019 and 15.05.2019, for

the reason that they stand foul of the ratio laid by the Supreme Court in ***Rafiq Masih (Supra)*** and ***Thomas Daniel (Supra)*** as also for the aforesaid observations, are set aside.

32. Since the present petition has been allowed, the prayer (b) of the petition is also allowed and the respondent no.1 is directed to return a sum of Rs.30,000/- which was stated to have been recovered from the petitioner. The same be done within six weeks from today.

33. The petition along with pending application is disposed of with no order as to costs.

**TUSHAR RAO GEDELA, J**

**MAY 13, 2024**/ms