



[2024:RJ-JD:40745]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 18683/2019

Purna Shanker Sharma S/o Sh. Ram Chandra Sharma, Aged About 55 Years, Resident Of Danthal, Tehsil And District Bhilwara (Raj.) At Present Posted At Computer Cum Data Entry Operator, M.I.v. Textile And Engineering College, Pur Road, Bhilwara (Rajasthan).

----Petitioner

Versus

1. The Secretary, Finance Department (Budget), Government Of Rajasthan, Jaipur (Rajasthan).
2. The Joint Secretary, Finance Department (Budget), Government Of Rajasthan, Jaipur (Rajasthan).
3. The Joint Secretary, Finance Department (Rules), Government Of Rajasthan, Jaipur (Rajasthan).
4. The Secretary, Department Of Technical Education, Government Of Rajasthan, Jaipur (Rajasthan).
5. The Principal, MLV Textile & Engineering College, Bhilwara, Pratap Nagar, Pur Road, Bhilwara (Rajasthan).

----Respondents

For Petitioner(s) : Mr. Dinesh Choudhary

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**Order****01/10/2024**

1. Grievance of the petitioner herein inter alia stems out of order dated 16.05.2019 (Annex.4), vide which, respondents have initiated recovery against the petitioner.

2. Briefly speaking, relevant facts as pleaded in the petition are that the petitioner was initially appointed on the post of Computer-cum-Data Entry Operator in the MLV Textile & Engineering College, Bhilwara on temporary basis. Subsequently,





his services were confirmed in the year 1993. Further, MLV textiles Institute also approved rules for promotion for technical staff as notified by Engineering College Kota. On account of non-availability of any promotional post, petitioners were given benefit of ACP after completion of 9 years' service.

2.1 Thereafter, posts on which the petitioner was working, were bifurcated. According to said bifurcation, petitioner was eligible for pay-scale of 5000-150-8000 after completion of 9 years' service. However, petitioner who was working on a higher grade pay, on account of bifurcation of said posts, his fixation was made on a lower grade pay. Pursuant to that, vide impugned order dated 16.05.2019 (Annex.4), the Joint Secretary Education Department directed the Principal MLV Textile and Engineering College to initiate recovery against the petitioner.

3. Defence taken in the reply is that excess amount in salary paid to the petitioner was under bonafide error. It is settled position of law that an excess amount which has been paid to employee to which he is not legally entitled can always be recovered. Hence, the writ petition be dismissed.

4. From the above, it thus clearly emerges that there is no misrepresentation and/or concealment of any kind by overt or covert act or omission on the part of the petitioner, which led to according him higher pay than the one he deserved. The mistake was concededly on the part of the department and the petitioner did not mislead the department or contribute in any manner to accord himself higher salary than he ought to have been paid. In that context, reference may be had to ***State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors. : (2015) 4 SCC 334***



which subsequently followed in **Thomas Daniel v. State of Kerala & Ors. : 2022 SCC Online SC 536.**

5. The case of petitioner is squarely covered by parameters as enumerated in case of Rafiq Masih (supra), which are reproduced hereinbelow:-

"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."

6. A perusal of the above leaves no manner of doubt that the case of the petitioner is squarely covered by judgment rendered in Rafiq Masih, *ibid.*

7. It is not controverted either in the reply or otherwise that the benefit sated to have been erroneously conferred to the petitioner lasted for as long as 30 years. Being so, the period is clearly more than 5 years, as mentioned in sub-clause (ii) of para 18 of the judgment *ibid.* The mistake, if any, was concededly on the part of



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the department. In view the ratio laid down in Rafiq Masih (supra), the impugned order is not sustainable.

8. Accordingly, the impugned order dated 16.05.2019 (Annex.4) is set aside with consequences to follow. Recovery, if any, made from the petitioners shall be refunded back to the petitioners alongwith interest as per applicable Service Rules.

9. Pending application(s), if any, stand disposed of.

(VINIT KUMAR MATHUR),J

436-/Arun Pandey/-

