

**Central Administrative Tribunal
Madras Bench**

OA/310/01479/2015

Dated the 11th day of November Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

K.Ravichandran
S/o R.Kuppusamy,
No.5/83, MMDA Nagar I Main Road,
Maduravoyal,
Chennai 600 095. .. Applicant
By Advocate **M/s.Yogesh Kannadasan**

Vs.

1. Union of India, rep. by the
Director General,
Central Council for Research in
Ayurvedic Sciences,
M/o Ayush, Govt. of India,
New Delhi 110 058.
2. Union of India, rep by
Assistant Director I/C,
Captain Srinivasa Murti Research Institute
for Ayurveda & Siddha Drug Development,
(S-III) I/C, (CCRAS), Arumbakkam,
Chennai 600106. .. Respondents

By Advocate **Mr.M.T.Arunan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“.....to call for the records of the proceedings bearing Office Order No.28/2015-2016 dt. 05.8.2015 of the second respondent and to quash the orders passed therein and pass such other or further orders as this Tribunal may deem fit to pass and render justice.”

2. In brief the applicant's case is that he is a Lab Technician working under the respondents and on completion of 10 years of service, the applicant's Grade Pay was fixed at Rs.2400/- on implementation of 6th Pay Commission report. Thereafter, the respondents had clarified that he was promoted as Lab Technician and it will be considered as 2nd Financial Upgradation and he will get the 3rd Financial Upgradation only after completion of 30 years. In the meanwhile, the MACP Scheme has come into effect and the Screening Committee by order dated 09.5.2011 granted the 3rd Financial Upgradation and his GP was fixed at Rs.4200/-. While he was drawing his pay and allowances as such, on 05.8.15, the 2nd respondent had issued a memo stating that the 3rd upgradation i.e. GP Rs.4200/- granted was a mistake and is incorrect and his 3rd MACP GP will be corrected as Rs.2800/- and as such an excess amount of Rs.1,77,325/- is paid and the said amount will be recovered from him. The applicant has given representation to the respondents on 05.8.15 and 19.8.15 stating the facts of the case. But the respondents had not considered the same. According to the applicant, the recovery sought against him is illegal and unsustainable in law. He had

received the pay and allowances in the revised GP of Rs.4200/- w.e.f. 01.8.09 onwards and the respondents are barred from recovering the same as more than 5 years had lapsed. He mainly relies upon the decision of the Hon'ble Supreme Court in ***State of Punjab & Ors v. Rafiq Masih (White Washer & Ors.) reported in [(2015) 4 SCC 334]*** in support of his case. According to him, he has not contributed to the commission of any mistake and if at all any mistake is crept in, he cannot be held responsible for the same. According to him, one fellow employee by name Mr.Munibabu Reddy was also granted the GP of Rs.4200/- and he was permitted to retire without any recovery. So, according to the applicant, the respondents are not entitled to recover the amount from him. The applicant has sought an interim stay of the recovery of the said action and the Tribunal has granted the stay of recovering the amount as per order dated 20.10.15 and the stay is continuing.

3. The respondents entered appearance and filed the reply statement denying the averments in the OA. According to them, the order granting 3rd MACP with GP Rs.4200/- was an inadvertent mistake and it has to be recovered from the applicant. The order dated 05.8.15, refixing the GP as Rs.2800/- is legal, correct and valid and it was done as per the guidelines of the DOPT. According to the respondents, Mr.Munibabu Reddy, referred by the applicant was not an employee of the respondents' institution. He was employed with Central Council for Research in Siddha, Chennai and he cannot be compared with the case of the applicant. According to them, the case of ***State of Punjab & Ors v. Rafiq Masih*** referred supra is not made applicable to all cases.

4. Both sides were heard and the only point which came up for consideration is whether the applicant's case will come under the purview of the Hon'ble Supreme Court's decision in *State of Punjab & Ors v. Rafiq Masih*. Counsel for the applicant mainly relies on the above decision for supporting his claim. According to him, para-18 of the said judgment covers the case of the applicant also. Para-18 of the said judgment is as follows:

“18. It is not possible to postulate all situations or 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employees, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from 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.”

According to the applicant, he is entitled to get the relief as per the guidelines issued by the Hon'ble Supreme Court.

5. On the other hand, the counsel for the respondents would contend that the applicant's case is not covered by the above decision. In this case, the 3rd MACP was

granted on 09.5.2011 and GP was fixed as Rs.4200/-. On 05.8.15 the order was issued stating the mistake committed and the excess amount paid was ordered to be recovered. This was done within a span of 5 years and hence the facts of the case will not attract the guidelines issued by the Hon'ble Supreme Court.

6. We have carefully gone through the pleadings and various arguments put forward by both sides. Admittedly, the applicant was granted 3rd Financial Upgradation by order dated 09.5.2011 and his GP was fixed at Rs.4200/- w.e.f. 2009 onwards. On 05.8.15 the 2nd respondent had issued a memo stating that the earlier fixation of GP at Rs.4200/- was an inadvertent mistake and he is entitled to get the GP at Rs.2800/- and the amount of Rs.1,77,325/- is drawn by the applicant as excess amount and he is liable to return the same. The Hon'ble Supreme Court in *Rafiq Masih*'s case has laid down various parameters to be followed in similar cases. In Para-10 of the said judgment the Hon'ble Apex Court has observed that -

“10. In view of the aforesaid constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. **An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law.** Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.”

On a reading of the said para, it can be seen that “an action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous

to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law". In this particular case, the order of granting 3rd MACP was issued on 09.5.2011 and the employee had obtained the benefit w.e.f. 2009 onwards. After completion of 4 Years and 3 Months, the respondents had issued a memo stating the mistake and demanding recovery of the amount drawn in excess i.e. Rs.1,77,325/- from the applicant. Here we can see that the recovery is sought to be effected after the completion of more than 4 years and just before the completion of 5 years. If we go through the guidelines issued, we can see that the Hon'ble Supreme Court has held in para-5 of the guideline that "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". Here also the applicant was under the impression that the GP fixed to him is genuine and correct and he has drawn pay from 2009 onwards. The said drawal of salary had continued till August 2015. It was then only the respondents had issued the communication stating the mistake committed by the respondents and seeking recovery of the large amount of Rs.1,77,325/-. The applicant in this case is only a Lab Technician and repayment of an amount of Rs.1,77,325/- will be iniquitous and harsh and it would outweigh the equitable balance of employer's right to recover the same. The inordinate delay in recovering the amount created iniquitous and harsh

consideration wherein the court has to interfere with the recovery of the said amount.

7. In the above backdrop, we are of the view that it will be harsh and iniquitous and arbitrary to recover the amount of Rs.1,77,325/- after a lapse of more than 4 years. Hence, the Office Order No.28/2015-2016 dt. 05.8.2015 of the second respondent is hereby quashed. We hereby order that the respondents are not entitled to recover the said amount as per the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih***'s case. The interim order granted on 20.10.15 by this Tribunal is made absolute.

8. Accordingly the OA is disposed off. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

11.11.2019

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Annexures referred to by the applicants in OA No.1449/2016:

Annexure A1: Fixing GP as Rs.2400/- w.e.f. 1.1.06 by the 2nd respondent dt. 07.11.08.

Annexure A2: Order of promotion being treated as II Financial Upgradation by the 2nd respondent dt. 15.1.10.

Annexure A3: Order of III Financial Upgradation with GP Rs.4200/- by the 2nd respondent dt. 09.5.2011.

Annexure A4: Impugned order of recovery dt. 05.8.15.

Annexure A5: Representation to the 1st respondent dt. 05.8.15.

Annexure A6: Representation to the 1st respondent dt. 19.8.15.

Annexure A7: Representation to the 2nd respondent dt. 10.9.15.