

Before Anil Kshetarpal, J.

PRABHU KUMAR RAWAT AND OTHERS—*Petitioners*

versus

**NATIONAL HYDROELECTRIC POWER CORPORATION
LTD. & OTHERS**—*Respondents*

CWP No. 14979 of 2020

August 10, 2021

A. Constitution of India, 1950—Art. 142— Supreme Court judgments passed under Article 142 of Constitution of India (equitable jurisdiction)—Held are not binding precedents.

Held that, when the matter was placed before the Larger Bench, it was held that such judgments are in exercise of powers under Article 142 of the Constitution of India and therefore, are not binding precedents.

(Para 24)

B. Constitution of India, 1950, Art. 226— Employees of public sector undertaking, after receiving amount under interim directions in previous writ petition in which they ultimately failed, are not entitled to claim that recovery is barred by limitation — Held, recovery can be made from employees, particularly after a long passage of time and after some of petitioners have already retired.

Held that the judgment passed in Rafiq Masih (supra) does not apply to the facts of the present case; particularly when the amount is sought to be recovered as per the interim order passed by the Court. The petitioners, after having received the payment under the interim directions of the court, cannot now resist the recovery as per the same order dated 08.07.1994. Still further, it has come on the record that the payment made to the petitioners is much more than the amount sought to be recovered.

(Para 24)

D.S. Patwalia, Sr. Advocate, with
Gaurav Rana, Advocate, *for the petitioners*
in CWP No.14979 of 2020

Chetan Mittal, Sr. Advocate with Shifali Goyal, Advocate,
for the petitioners(in CWP No.17725 and 17727 of 2020)

Adityajit Singh Chandha, Advocate,
for the petitioners (in CWP No.17998 of 2020)

Tushar Mehta, Solicitor General of India with Lokesh Sinhal, Advocate and Saurav Aggarwal, Advocate and Pritpal Nijjar, advocate and Ananvay Anandvardhan, Advocate, for the respondents.

ANIL KSHETARPAL, J.

(1) By this judgment, 4 connected writ petitions i.e. Civil Writ Petition No.14979, 17725, 17727 and 17998 of 2020, filed by the current employees as well as the ex-employees of the National Hydroelectric Power Corporation Ltd. (hereinafter referred to as 'the NHPC) shall stand disposed of. All these writ petitions were listed and heard together on various dates of hearing. Learned counsel for the parties are ad-idem that these writ petitions can be disposed of by a common judgment.

(2) In the considered view of this Court, the following questions arise for adjudication:-

(i) Even after observing in the peculiar facts of the case that the relief claimed is inequitable, whether it will be appropriate to follow the judgments passed by the Hon'ble Supreme Court in the exercise of its jurisdiction under Article 142 of the Constitution of India (equitable jurisdiction)?

(ii) Whether the highest paid employees of the public sector undertaking, after receiving the amount under the interim directions in the previous writ petition in which they ultimately failed, are entitled to claim that the recovery from them is barred by limitation?

(3) In all these writ petitions, the main challenge is to the office order No.41/2020, issued on 17.04.2020, which is extracted as under:-

1. Promotion of Executives from Chief/Chief Engineer (E-7 grade) to the post of General Manager (E-8 grade) in the same pay scale of 51300-3%-73000 shall be treated as re-designation, thus the promotional benefit of notional increment granted if any on such re-designation from Chief (E-7) to General Manager(E-8) in the same pay scale of 51300-3%-73000 in the 2007 pay structure shall be

withdrawn w.e.f. 01.01.2007. Accordingly the Stagnation Increments which was withdrawn in the year 2007 pay structure on such promotion shall be restored.

2. Increment, if any, falling due on 01.01.2007 shall be granted first in the pre-revised pay scale (1997 pay revision) and only thereafter fitment benefit shall be granted, and pay fixed in the revised pay scales as on 01.01.2007. Accordingly, clause 3.1 of Part-I Office Order No.46/2010 dt: 02.11.2010 stands amended to above extent.

3. Stagnation increment shall be granted once in two years on reaching the maximum of the pay scale in the 1997 pay structure i.e. during the period from 01.01.1997 to 31.12.2006, thus clause 9 of the of Part-I Office Order No.22/2006 dt:09.05.2006 shall stand amended to above extent.

4. Employees who have been appointed on or after 01.01.1989 and continued in CDA pay scales, shall be placed in IDA Pay Scales retrospectively from the date of their initial appointment in pursuance to Part-I Office Order No:23/90 dt:10.07.1990 & Office Order No:12/93 dt:19.05.1993.”

(4) It is apparent that the aforesaid decision has been issued based on the recommendations of the Committee and approval of the Chairman- cum-Managing Director.

FACTS

(5) It is important to note that previously certain Public Sector Undertakings were paying its employees on the pattern of Central Dearness Allowance (in short ÇDA'). With a view to look into the pay of the employees of Public Sector Undertakings, a High Powered Pay Committee (in short 'HPPC') was constituted which submitted its final report on 02.11.1988. This led to filing of writ petitions in the various High Courts. Ultimately, the Supreme Court decided these writ petitions in the year 1990, the Supreme Court vide judgment dated 03.05.1990 in *Jute Corporation of India Officers' Association Etc. versus Jute Corporation of India Ltd. and Another Etc*¹, held as under:-

¹ (1990) 3 SCC 436

“We heard the parties on the proposals contained in the affidavit and found that there was not much controversy over the proposals except in regard to the date of the implementation of the House Rent Allowance. The employees insisted that the said allowance should be given from 1.1. 1986 whereas the Government contended that it can properly be implemented only w.e.f. January 1, 1989, since the Report was of 2nd November, 1988. We, however, direct as follows:-

(i) The scales of pay and dearness allowance as recommended in the Report will be extended to those employees who have been appointed with specific terms and conditions for grant of Central D.A. This will be equally applicable to the employees who by rules laid down by the public sector enterprises are being paid Central dearness allowance.

(ii) The employees appointed on or after January 1, 1989, will be governed by such pay-scales and allowances as may be decided by the Government in its discretion. Those appointed earlier with IDA pattern will continue to be governed in accordance with the terms and conditions of their appointment.

(iii) The pay revision for those employees in respect of whom the recommendations are hereby being directed to be implemented hereafter, will take place only as and when similar changes are effected for the Central Government employees. These employees will, however, continue to enjoy the option to switch over to the IDA pattern of the scales of pay etc. on a voluntary basis.

(iv) The various recommendations made in the Report will be implemented with effect from the dates as follows. These dates are broadly in conformity with those specified in the Report:

Item	To be implemented w.e.f.
1. Revised pay-Scale and revised D A formula	1.1.1986 (Para 16.1)
2. First installment of	1.6.1983 (Para 16.3)

interim relief	
3.Second installment of interim Relief	1.3.1985 (Para 16.3)
4.CCA as per revised slabs (Para 11.6 of Chapter 11 of the Report	1.1.1985 (From 1..11986 to December 31, 1988 CCA will be paid at the existing rate at notional pay in the revised pay scales (Para 11.7 of the report)
5. House Rent Allowance percentage rates as per BPE's OM No. 1 (3)/83 BPE. (WC) dated 1.7.83, subject to overall ceiling of Rs. 1250, 1000, 680, 340 and 310 for Delhi/Bombay, A.B1 and B2, C and unclassified cities respectively.	Ceiling on payment of HRA without production or rent receipt to be revised from 1.12.1988. The existing HRA structure to be revised norms and rates fixed from a Prospective date (Ref. Para 11.15)
6.Medical facilities in terms of para 11.21 of the Report	From prospective date to be decided by the Management of the PSBs
7.Leave Travel Concession	-Do-
8. Other Allowance and per-quisites as per recommendations contained in Chapters 12 and 13 of the Report	The quantum of benefits to be decided by the Management of PSEs should be given effect to prospectively in terms of para III. 7 part III of the Report

(v) The arrears arising on account of pay, DA and other allowances etc., would be adjustable against ad hoc payments made from time to time.”

(6) It is important to note that all these petitioners were appointed/promoted after 01.01.1989 and in their appointment

/promotion letters, it was specifically stipulated that at present their pay and allowances are being provisionally fixed subject to the final decision of the Government. In Civil Writ Petition No.14979 of 2020, the details of the various writ petitioners along with their present designation as well as monthly emoluments have been compiled in a tabulated form, which is extracted as under:-

Name	Joined NHPC as	Date of Joining at NHPC	Present Designation
Prabhu Rawat Kumar	Probationary Executive	03.09.1989	General Manager (Civil)
Anirudh Gupta	Programmer	14.02.1989	General Manager (IT)
Ashok Nauriyal Kumar	Probationary Executive	22.05.1989	General Manager (Civil)
Hasan Nadeem	Probationary Executive	27.04.1989	General Manager (Civil)
Santosh Kumar	Probationary Executive	12.04.1989	General Manager (Civil)
Raghvendra Kumar Gupta	Probationary Executive	26.12.1989	General Manager (Civil)
Rajat Gupta	Probationary Executive	15.04.1989	General Manager (Civil)
SanjeevKumar Yadav	Probationary Executive	10.03.1989	General Manager (Civil)
Sanjay Darbari	Probationary Executive	13.03.1989	General Manager (Civil)
Ajay Mittal	Probationary Executive	21.04.1989	General Manager (Civil)
Harsh Singh	Probationary Executive	15.04.1989	General Manager (Civil)

Sandeep Kumar	Probationary Executive	25.04.1989	General Manager (Civil)
Deepak Saigal	Probationary Executive	06.08.1989	General Manager (Civil)
Prashant Atreya	Probationary Executive	19.10.1989	General Manager (Civil)
Vijay Kumar Sinha	Probationary Executive	20.03.1989	General Manager (Electrical)
Vivek Dwivedi	Probationary Executive	22.05.1989	General Manager (Civil)
Harish Bulchandani	Probationary Executive	13.06.1989	General Manager (Civil)
Rajan Jairath	Probationary Executive	19.05.1989	General Manager (Civil)
Vishal Kumar Saini	Probationary Executive	12.04.1989	General Manager (Civil)
Manoj Kumar Singh	Probationary Executive	03.03.1989	General Manager (Civil)
Raj Kumar	Probationary	03.01.1989	General Manager (Civil)
Chaudhary	Executive		
Sandeep Mittal	Probationary Executive	13.03.1989	General Manager (Civil)
Satish Kumar Chauhan	Probationary Executive	05.05.1989	General Manager (Civil)
Uday Shanker Sahi	Probationary Executive	15.05.1989	General Manager (Civil)
Lalitendu Kumar Tripathi	Probationary Executive	08.03.1989	General Manager (Civil)

Milind Ganesh Gokhle	Probationary Executive	17.04.1989	General Manager (Electrical)
Rajneesh Agarwal	Probationary Executive	22.05.1989	General Manager (Civil)
Sarita Verma	Programmer	02.01.1989	Deputy General Manager
Rajeev Jain	Probationary Executive	18.02.1989	General Manager (Civil)
Sandeep Batra	Probationary Executive	25.03.1989	General Manager (Civil)
H.N. Satyanarayana	Probationary Executive	28.02.1989	General Manager (Civil)
Ajay Mathur	Probationary Executive	05.10.1987	General Manager (Civil)
AK Grover	Probationary Executive	06.10.1987	General Manager (Civil)
AK Pathak	Probationary Executive	25.11.1987	General Manager (Civil)
Ashok Kumar	Probationary Executive	06.10.1987	General Manager (Civil)
AZ Geelani	Probationary Executive	06.10.1987	General Manager (Electrical)
BBN Subudhi	Probationary Executive	07.10.1987	General Manager (Civil)
DK Jain	Probationary Executive	05.10.1987	General Manager (Civil)
Himanshu Shekhar	Probationary Executive	06.10.1987	Executive Director
MK Gupta	Probationary Executive	05.12.1987	General Manager (Civil)

PK Jain	Probationary Executive	05.10.1987	General Manager (Civil)
Rajeev Baboota	Probationary Executive	05.10.1987	General Manager (Civil)
Rajeev Jerath	Probationary Executive	07.10.1987	General Manager (Civil)
RK Agarwal	Probationary Executive	28.12.1987	General Manager (Civil)
RP Sharma	Probationary Executive	25.11.1987	General Manager (Civil)
SN Nataraj	Probationary Executive	05.10.1987	General Manager (Civil)
SP Mukherjee	Probationary Executive	19.11.1987	General Manager (Civil)
Vipin Gupta	Probationary Executive	06.10.1987	General Manager (Civil)
Vivek Ranjan Shrivastava	Probationary Executive	05.10.1987	General Manager (Civil)
Anil Kumar Dash	Probationary Executive	02.03.1989	General Manager (Civil)

(7) The petitioners claim that the respondent-Corporation vide Part-I of its Office Order No.10/92 dated 07.05.1992, decided that all the employees appointed on or promoted on third CPC Scales of pay during the period between 01.01.1989 to 30.06.1990 would be allowed HPPC Scales and related allowances and benefits. Thus, the petitioners were held entitled to Central Government pay scales as they were appointed after 01.01.1989. Thereafter, vide another office order dated 19.05.1993, which was issued with the approval of the Ministry of Power, the respondent-Corporation decided to adopt scales of pay/allowances and other perquisites on Industrial Dearness Allowance (for short 'IDA') pattern with effect from 01.01.1989 with respect to employees appointed or promoted on or after 01.01.1989.

(8) Most of the writ petitioners have either joined between 1987 to 1989 as Probationary Executives or they have been promoted during that time. Clause 1.1 of their appointment letter reads as under:-

“1.1. The pay scales are under revision and a High Powered Pay Committee has been constituted by Govt. of India for revision of scales of pay, allowances etc. In the event of such revision, you will be placed in the revised pay scales corresponding to the above pay scale from the date of revision or date of your joining, which ever is later.”

(9) It is also not in dispute that the High Powered Pay Committee (HPPC) submitted its report on 02.11.1988. Pursuant thereto, a conscious decision was taken with the approval of the Central Government by the NHPC to shift all the employees appointed or promoted after 01.01.1989 on Industrial Dearness Allowance (IDA) pattern. Majority of the writ petitioners in Civil Writ Petition No.14979 of 2020 previously filed Civil Writ Petition No. 2799 of 1993 (NHPC Officers Association vs. Chairman- cum-M.D., NHPC) in the Delhi High Court. On 28.05.1993, the NHPS was restrained from deducting the difference between CDA and IDA. Thereafter, on 28.10.1993, the Court passed an order directing the NHPC to continue to pay salary according to CDA pattern as was being paid before 19.05.1993. On 08.07.1994, the High Court, once again, directed the NHPC to continue to pay salary on CDA pattern even after the promotion. However, the High court while passing the order clarified that the excess amount, if any paid, shall be liable to be recovered, subject to the final decision of the writ petition. Since, the NHPC has offices in different States, the writ petitions were filed in various High Courts including the High Court of Himachal Pradesh vide Civil Writ Petition No.805 of 1993 (Inderjit Barol vs. Union of India and others) and Allahabad High Court in *Anirudh Gupta versus Union of India and others*.

(10) On 09.12.1998, the NHPC gave an option to the employees who had filed various writ petitions to voluntarily opt for IDA i.e Industrial Dearness Allowance pattern. All the petitioners did voluntarily opt while stating that the same shall be without prejudice to the decision of the writ petitions filed by them. It may be noted here that such decision to opt for IDA pattern was irrevocable. The petitioners were shifted to IDA pattern with effect from 01.01.1999. In other words, the IDA pattern salary was implemented after the petitioners voluntarily chose the same; with effect from 01.01.1999.

Thereafter, on 21.01.2000, the revised pay scales with effect from 01.01.1997 were implemented. The stagnation increments were also being granted. The writ petition filed before the Delhi High Court came to be dismissed for non-prosecution on 21.07.2008. Admittedly, the petitioners did not apply for restoration of the writ petition before the Delhi High Court. Similarly, the writ petitions filed in various other High Courts were dismissed. On 26.11.2008, the pay revision with effect from 01.01.2007 was implemented. In fact, it appears that the dismissal of the writ petition in the Delhi High Court did not come to the notice of the NHPS.

(11) As regards the connected writ petitions, the facts are identical. The information has been compiled by the petitioners in a tabulated form which is extracted as under:-

CWP No.17998 of 2020

Name	Joined in NHPC as	Date of joining	Present posting
Narayan Singh	Draftsman Grade II	02.11.1983	Manager (ED)
Gian Chand	Draftsman Grade II	04.04.1983	Manager (ED)
Kartar Singh	Draftsman Grade II	25.03.1983	Manager (ED)
Shyam Ji Gupta	Draftsman Grade II	01.11.1983	Manager (ED)
Brahma Nana Dhyani	Draftsman Grade II	04.01.1982	Manager (ED)
Malkiat Singh	Draftsman Grade II	29.10.1983	Manager (ED)
SC Bajwan	Draftsman Grade II	16.12.1983	Manager (ED)
Rakesh Kumar Gupta	Draftsman Grade II	10.11.1983	Manager (ED)
Ajay Kumar Sharma	Draftsman Grade II	25.04.1984	Manager (ED)
Kirti Mahajan	Draftsman Grade II	19.04.1984	Deputy Manager (ED)

Dalbir Singh	Draftsman Grade II	30.11.1984	Deputy Manager (ED)
S.K.Singla	Draftsman Grade II	11.04.1980	Deputy Manager (ED) Retired
Lal Singh	Draftsman Grade II	21.03.1983	Deputy Manager (ED) Retired

CWP No.17727 of 2020

Name	Date of Joining in NHPC	Joined in the post of	Retirement due on	Present Designation
Satpal Singh	18.02.1985	Probationary Executive (Mechanical)	31.07.2023	General Manager (Mechanical)
Vinod Kumar Maini	20.02.1985	Probationary Executive (Civil)	31.12.2021	Executive Director
Harish Kumar	01.04.1985	Probationary Executive (Civil)	31.01.2022	Executive Director
Shyam Lal Kapil	12.10.1987	Geophysicist	31.01.2023	Executive Director
Rajan Kumar	21.02.1985	Probationary Executive (Civil)	31.08.2022	Chief General Manager
Harjeet Singh Puri	15.05.1986	Senior Accountant/ Probationary Executive (Civil)	31.01.2022	Chief General Manager
Prakash Parmar	18.02.1985	Probationary Executive (Mechanical)	30.06.2022	General Manager (Mechanical)

Tapas Sinha	22.02.1985	Probationary Executive (Civil)	30.04.2023	General Manager (Civil)
Janesh Sahni	01.04.1985	Probationary Executive (Civil)	30.06.2023	General Manager (Civil)
Virender Salman	12.11.1984	Engineer (Civil)	31.10.2021	General Manager (Civil)
Ashish Kumar Chouksey	13.05.1985	Probationary Executive (Civil)	31.05.2023	General Manager (Civil)
Anil Kumar Jain	22.02.1985	Probationary Executive (Civil)	30.06.2022	General Manager (Civil)
Parag Saxena	22.02.1985	Probationary Executive (Civil)	31.07.2023	General Manager (Civil)
Rajeev Sachdeva	21.02.1985	Probationary Executive (Civil)	28.02.2023	General Manager (Civil)
Kajal Saha	27.11.1989	Probationary Executive (Civil)	31.07.2024	General Manager (Civil)
Brij Mohan	25.11.1989	Probationary Executive (Civil)	30.06.2024	General Manager (Civil)
Ram Swaroop	08.03.1990	Probationary Executive (Mechanical)	30.04.2026	General Manager (Mechanical)

CWP No.17725 of 2020

List of employees Retired (Ex-Employees)

Name	Date of joining NHPC	Joined NHPC as	Date of Retirement	Designation of Retirement
Rajesh Kumar Jaiswal	13.12.1982	Probationary Executive (Civil)	30.09.2020	Executive Director
Atul Kumar	01.05.1981	Probationary Executive (Civil)	31.03.2019	Executive Director
Amod Kumar Aggrawal	12.10.1982	Probationary Executive (Civil)	30.06.2019	Executive Director
Surendr Kumar Dubey	12.10.1982	Probationary Executive (Civil)	31.05.2019	Executive Director
Rupak Jain	13.10.1982	Probationary Executive (Elect)	30.11.2019	Executive Director
Anil Kumar Sinha	21.02.1985	Probationary Executive (Civil)	31.05.2019	Chief General Manager
Rais Mian	18.02.1985	Probationary Executive (Mech.)	31.08.2019	Chief General Manager
Amitabh Srivastav	12.11.1984	Engineer (Mechanical)	31.08.2020	General Manager (Mech)
Prasanta Kumar Biswas	06.05.1987	Programmer	31.01.2020	General Manager (IT)
Rakesh Gupta	17.12.1984	Programmer	31.10.2018	General Manager (IT)
Ravinder Raina	23.11.1984	Engineer (Civil)	30.04.2020	General Manager (Civil)

Yoginder Kotha	09.11.1984	Engineer (Civil)	30.06.2020	General Manager (Civil)
Pawan Kumar	21.02.1985	Probationary Executive (Civil)	30.06.2020	General Manager (Civil)
Vinay Kumar Chaudhary	22.02.1985	Probationary Executive (Civil)	31.07.2020	General Manager (Civil)
Sunil Gupta	05.05.1984	Engineer (Civil)	30.06.2018	Chief Engineer (Civil) Redesignated as General Manager (Civil)
Devendra Pal Maurya	13.10.1982	Probationary Executive (Civil)	31.07.2020	General Manager (Civil)
S.K.Pandey	27.11.1984	Engineer (Civil)	31.07.2019	General Manager (Civil)
Arun Kumar Chaudhary	21.02.1985	Probationary Executive (Civil)	31.12.2019	General Manager (Civil)
Sharad Bhatnagar	02.06.1988	Geologist	30.11.2019	General Manager (Geology)
Rakesh Chandra Sharma	09.10.1987	Geologist	31.10.2019	General Manager (Geology)
Janardhan Chaudhary	29.12.1984	Probationary Executive (Elect.)	31.03.2020	Director (Technical)
Dhiman Parija	01.05.1981	Probationary Executive	31.10.2018	Executive Director

		(Civil)		
Rakesh	13.10.1982	Probationary Executive (Elect.)	31.05.2020	Executive Director
Narendra Kumar	13.10.1982	Probationary Executive (Civil)	30.09.2019	Executive Director
Vijay Kumar Rattan	11.10.1982	Probationary Executive (Civil)	31.10.2018	Executive Director
Pradeep Kumar Johar	16.10.1982	Probationary Executive (Mech.)	31.12.2018	Executive Director
Manoj Kumar	26.12.1984	Engineer (Civil)	30.11.2019	Chief General Manager
Dinesh Chandra Tripathi	01.04.1985	Geologist	28.02.2019	Chief General Manager
Surendra Kumar Agarwal	30.11.1984	Engineer (Civil)	31.12.2019	General Manager (Civil)
S Murugappan	08.10.1987	Geophysicist	30.09.2018	Chief (Geophysics), redesignated as General Manager (Geophysics)
Satya Pal Singh Kundla	22.02.1985	Probationary Executive (Civil)	30.06.2020	General Manager (Civil)
Babu Lal Gupta	26.04.1985	Probationary Executive (Civil)	30.06.2019	General Manager (Civil)
Anil Kumar Chawla	21.11.1985	Engineer (EDP)	31.03.2020	General Manager (IT)

Brij Mohan Gupta	06.06.1986	Senior Accountant	30.06.2019	General Manager(FIN)
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Employees Due to Retire Within 1 Year

Nurani Subramanian Parameshwaran	18.02.1985	Probationary Executive (Electricla)	31.05.2021	Executive Director
Suresh Chandra Pal	12.10.1982	Probationary Executive (Civil)	31.07.2021	Executive Director
Debajit Chattopadhyay	14.02.1985	Probationary Executive (Electrical)	31.01.2021	Executive Director
Chandra Bali Singh	12.10.1982	Probationary Executive (Mechanical)	31.01.2021	Executive Director
Alok Kumar	18.02.1985	Probationary Executive (Mechanical)	31.10.2020	Chief General Manager
B.P. Rao	20.02.1985	Probationary Executive (Civil)	30.04.2021	General Manager (Civil)
Khalid Umar	21.02.1985	Probationary Executive (Civil)	30.11.2020	General Manager (Civil)
Debasish Chattopadhyay	26.03.1985	Probationary Executive (Electrical)	31.01.2021	General Manager (Electrical)
Manchali Anantha Padmana- bhachar	26.03.1985	Probationary Executive (Electrical)	31.05.2021	General Manager (Electrical)

Ramji Ram Yadav	04.04.1985	Probationary Executive (Civil)	30.06.2021	General Manager (Civil)
Sarabjit Singh	21.02.1985	Probationary Executive (Civil)	31.07.2021	General Manager (Civil)
Rakesh Goel	01.04.1985	Probationary Executive (Civil)	31.08.2021	General Manager (Civil)
Sahadev Khatua	20.02.1985	Probationary Executive (Civil)	28.02.2021	General Manager (Civil)
Jitendera KumarSingh	22.02.1985	Probationary Executive (Civil)	30.11.2020	General Manager (Civil)
Vijay Kumar	28.12.1987	Probationary Executive (Finance)	31.12.2020	Executive Director (IA)

(12) In a brief counter affidavit, respondent no.1 has highlighted that on account of the decisions impugned in the present writ petitions, the petitioners have become entitled to the total amount of Rs.19,17,61,317/- on account of pay revision, whereas the total amount recoverable from the petitioners on account of excess payment in view of interim order passed by the Court comes to Rs.9,62,00,000/- out of which Rs.3,63,00,000/- stands adjusted towards payment due to the petitioners relating to performance related pay for the year 2018-2019. It has further been pointed out that the decision is the consequence of a previous decision taken in the year 1993, which was the subject matter of challenge before the various High Courts. On 08.07.1994, the High Court of Delhi in CWP No.27799 of 1993, specifically observed that the excess amount paid on the account of interim order shall be liable to be recovered, if the petitioners fail in their writ petition. It has further been pointed out that overall the excess payment sought to be recovered from 804 employees comes to Rs.55.82 crores. The 804 employees have been divided into two categories, namely, 175 active and 626 non-active employees. It has further been pointed out that the petitioners in CWP No.14979 of 2020 are the highest paid employees

drawing monthly salary between 3.5 lacs to 4.5 lacs per month. It has also been brought to the notice of the Court that the writ petition filed by the employees challenging the decision of shifting them to IDA pattern was dismissed by the High Court of Himachal Pradesh vide decision dated 26.03.1999 in CWP No.805 of 1993. The High Court for the States of Jammu & Kashmir also dismissed the writ petition on merits in the year 1999. Thus, it has been pointed out that the petitioners are not entitled to the relief claimed.

(13) This Bench has heard the learned counsels for the parties at length and with their able assistance perused the paper books.

(14) The learned senior counsels representing the petitioners has submitted that the petitioners have not been given any show cause notice and consequently, in the absence of an opportunity of hearing, the orders under challenge are not sustainable. They further pointed out that now the decision taken by the respondents is not only taken at a belated stage but is also barred by limitation as recovery cannot be effected, at this stage. They further submitted that the decision on 17.04.2020 cannot be applied retrospectively. While relying upon the judgment passed by the Hon'ble Supreme Court in *State of Punjab versus Rafiq Masih*², they contended that no recovery can be made from the employees.

(15) The learned senior counsel representing the petitioners in CWP No.17725 of 2020, while supplementing the above arguments has stated that most of the petitioners in the writ petition have already retired or are on the verge of retirement. Hence, he submitted that no recovery could be made in view of the judgment passed in *Rafiq Masih (supra)*. He further pointed out that the order under challenge is inequitable in as much as the petitioners cannot be called upon, at this stage, to return the excess payment, particularly when the petitioners are not at fault.

(16) Per contra, learned counsel representing the respondent-Corporation contended that the amount is being recovered as per the order passed by the Court on 19.05.1993 and the petitioners after having received the enhanced amount under the interim directions of the court, cannot now be permitted to resist the recovery under the same orders. It has further been pointed out that hearing of the petitioners is not necessary because the amount is being recovered in

² (2015) 4 SCC 334

continuation of the previous orders, validity of which has been assailed by the petitioners in the writ petitions which have been dismissed. He further submitted that the details of the payment and the recovery has been uploaded on the web-site on 18.05.2020 and the comments were invited. The petitioners have failed to forward any comments. He further contended that no prejudice has been caused to the petitioners and they have been given an opportunity of hearing by the Court.

(17) After having heard the learned counsel for the parties, let's now analyze the same.

(18) In the considered view of this Court, the arguments of learned counsel for the parties can be divided into the following parts:-

- (i) The recovery of the amount suffers from delay and latches;
- (ii) The recovery from the salary is sought to be effected without granting an opportunity of hearing;
- (iii) In view of the law laid down in the judgment passed by the Hon'ble Supreme Court in *Rafiq Masih (supra)*, the amount cannot be recovered after the passage of a long time.

(19) As regards the first part, it may be noted that the petitioners do not dispute that they have received salary as per the CDA under the interim orders passed by the Court. In fact, in the year 1993, as per the judgment of the Supreme Court, all employees appointed/promoted after 01.01.1989 were shifted to IDA pattern. The majority of the petitioners challenged the same by filing various civil writ petitions in which they were granted interim protection. The Delhi High Court on 08.07.1994, directed the NHPC to continue to pay the amount of CDA pattern while directing that, in case the writ petition is dismissed, the amount shall be liable to be recovered. It is on account of the aforesaid observation that the recovery is being made. Thus, the order passed for recovery is only consequential. Still further, the amount is sought to be recovered as the salary as per 1997 and 2007 pay scales was being paid provisionally. The same has been finalized on 19.03.2019. The limitation for recovery has a direct co-relation with the cause of action. In the present case, the cause of action for alleged recovery has arisen in March, 2019. Still further, the petitioners after having received the payment under the interim directions of the Court cannot now be permitted to resist the same, particularly, when they have already lost in the previous round of litigation.

(20) Further, it is established that due to revision of the pay scales and decision taken by the NHPC, huge amount is being paid to the employees, whereas the amount sought to be recovered in comparison is much less. The payment and recovery is being carried out simultaneously. Furthermore, as already noted, in most of the writ petitions, the petitioners are working on top positions in the Public Sector Undertaking. They themselves are in a position to take decisions. Hence, the delay cannot operate against Public Sector Undertaking. Still further, the employer and the employee relationship continues. The accounts are being settled in consequence of the court orders. Moreover, it is apparent that after dismissal of their writ petitions in the various High Courts, the petitioners never informed the respondent-Corporation to recover the amount of excess pay.

(21) Hence, this Bench is of the considered opinion that there is no delay in passing the order under challenge.

(22) Another issue which needs attention is the alleged lack of hearing or issuance of show cause notice.

(23) It may be noted here that the decision to grant and withdraw benefits was taken on 19.03.2019. Thereafter, subsequent decision dated 17.04.2020, resulted in re-fixation of the pay right from beginning, particularly when initially only the provisional pay was fixed. Still further, in the year 1993, when the petitioners were sought to be shifted to CDA pattern, they filed the writ petition and it was under the interim orders of the court that they continued to draw pay on CDA pattern. Since, the writ petitions have been dismissed, therefore the recovery is being made. In between, the petitioners have voluntarily opted for the grant of pay on IDA pattern.

(24) Moreover, re-fixation of the pay was uploaded on the website on 18.05.2020, while inviting comments of the employees. Thereafter, the pay was updated on 25.06.2020. The petitioners did not object to the amount of revised pay and received the revised amount since April, 2020. Thus, the petitioners cannot claim that they have not been given any opportunity to show cause. Still further, the petitioners have failed to show the prejudice caused. It is by now well settled that the rules of natural justice are a flexible tool in the hands of the court; to effectuate substantive justice. In the absence of prejudice, a small irregularity shall not result in nullifying a valid order. The principles of natural justice cannot be relied in a vacuum without reference to the relevant facts and circumstances of the case. Rather it is required to be

applied having regard to the facts and situation. It is well settled that the principles of natural justice are no unruly horse and cannot be put into a straight jacket formula. Still further, the petitioners have been given an opportunity by the Court. Learned senior counsel representing the petitioners have been heard at length. Hence, this Bench is of the considered view that in the facts and circumstances of the present case, it will be inappropriate for this Court to interfere. In the facts of the case, the matter has remained pending for a period of 18 years, particularly after the Supreme Court had decided that the petitioners shall be placed and paid under Industrial Dearness Allowance Pattern. Hence, this Bench expresses its inability to accept the argument of learned senior counsel representing the petitioners.

(25) The next issue which requires attention is the argument of learned counsel representing the petitioners that in view of the judgment passed by the Supreme Court in *Rafiq Masih* (*supra*), no recovery can be made from the employees, particularly after a long passage of time and after some of the petitioners have already retired.

(26) It may be noted here that the judgment passed by the Supreme Court in *Rafiq Masih* (*supra*) is an exercise of powers under Article 142 of the Constitution of India which concerns its equitable jurisdiction. Therefore, such judgment, with greatest respect, cannot be applied without examining the facts. At one stage, the case of *Rafiq Masih* (*supra*) was referred to a Larger Bench of the Supreme Court. When the matter was placed before the Larger Bench, it was held that such judgments are in exercise of powers under Article 142 of the Constitution of India and therefore, are not binding precedents. Reliance in this regard can be placed on the judgment of the Larger Bench in *State of Punjab and another versus Rafiq Masih and others*³. Still further, the judgment passed in *Rafiq Masih* (*supra*) does not apply to the facts of the present case; particularly when the amount is sought to be recovered as per the interim order passed by the Court. The petitioners, after having received the payment under the interim directions of the court, cannot now resist the recovery as per the same order dated 08.07.1994. Still further, it has come on the record that the payment made to the petitioners is much more than the amount sought to be recovered. Moreover, it is imperative to apply the test of hardship before following the judgment passed in *Rafiq Masih* (*supra*), particularly when in paragraph 7 and 8 of the judgment, the

³ (2014) 8 SCC 883

Hon'ble Supreme Court has held that the right to recover against the employee shall only be resorted to when it would not cause hardship. Still further, as noticed above, the petitioners are the highest paid employees. Recently, they have also been paid a substantial amount on account of revision of the salary. The dues are being adjusted in 24 installments. The petitioners have failed to show equity in their favour.

(27) Consequently, this Bench expresses its inability to accept the argument of the learned counsel representing the petitioners. Consequently, all the writ petitions are dismissed.

Dr. Payel Mehta