**MAJESTY LEGAL**

**ADVOCATES & SOLICITORS**

# SUPREME COURT: UNDERTAKINGS CAN JUSTIFY RECOVERY OF EXCESS PAYMENTS

***Dr. M.K. Ravi Varma & Ors. v. National Institute of Technology & Ors.***[1]

The Hon'ble Supreme Court dismissed appeals challenging the recovery of excess salary-related benefits granted to teachers of the National Institute of Technology. The judgment clarifies the legal position on recovery of financial benefits mistakenly granted to employees.

The dispute arose after Academic Grade Pay benefits were extended to Lecturers and Assistant Professors in October 2009 but withdrawn in January 2010 when it was discovered that the teachers had not completed the requisite years of service. The employees challenged the recovery, contending that the excess payments had been made without any misrepresentation, fraud or fault on their part.

The Court examined the principles laid down in *State of Punjab v. Rafiq Masih (White Washer)*, (2015) 4 SCC 334, and *Thomas Daniel v. State of Kerala*, 2022 INSC 498. It also considered *Chandi Prasad Uniyal v. State of Uttarakhand*, (2012) 8 SCC 417, and *High Court of Punjab & Haryana v. Jagdev Singh*, (2016) 14 SCC 267. Particular emphasis was placed on the undertaking furnished by the teachers, agreeing to refund amounts found to have been paid in excess due to erroneous pay fixation.

Relying on the undertaking and the principle recognised in *Jagdev Singh Supra*, the Court held that the recovery was justified in the circumstances. It observed that the benefits had been granted by mistake and withdrawn promptly upon discovery of the error. The Court also referred to Section 72 of the Indian Contract Act, 1872, which requires a person who receives money by mistake or under coercion to repay it. The employees' claim of hardship was rejected because no such case had been pleaded and established before the Court.

The judgment reinforces that an employee's lack of fraud or misrepresentation does not, by itself, make recovery of excess payments impermissible. However, the possibility of relief on grounds of exceptional hardship remains dependent on the facts and evidence of the individual case. The decision highlights the importance of undertakings furnished during pay fixation and the need to examine the circumstances of each recovery before determining whether it can legally be sustained.


**TEAM MAJESTY LEGAL**[2]

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[1] Civil Appeal Nos. 8329-8336 of 2016; Decided on 23.09.2026

[2] Majesty Legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

2026 INSC 1080

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 8329-8336 OF 2016**

**DR. M.K. RAVI VARMA ETC. ETC. ...APPELLANTS**

**VS.**

**NATIONAL INSTITUTE OF TECHNOLOGY AND ORS. ...RESPONDENTS**

**J U D G M E N T**

**DIPANKAR DATTA, J.**

**1.** A judgment and order of reversal is under challenge in this appeal by special leave, granted on 22nd August, 2016. A Single Judge of the High Court of Kerala at Ernakulam[1], *vide* a judgment and order dated 26th November, 2014, allowed a writ petition[2] of the appellants along with two other writ petitions[3]. While hearing writ appeals[4], presented by the National Institute of Technology through its Registrar and its Director, a Division Bench of the High Court allowed the same by its

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[1] High Court
[2] WP (C) No.13256 of 2013 (F)
[3] WP (C) No. 27461 of 2013 and WP (C) No. 4317 of 2014
[4] WA Nos. 721, 722, 725 and 1047 of 2015

judgment and order dated 13th November, 2015[5]. Appellants have taken exception to it.

**2.** We are now called upon to decide which of the two views – that of the Single Judge or the Division Bench – is correct.

**3.** Facts leading to the writ petitions have been noted by the Single Judge as well as by the Division Bench in their respective judgments and orders in detail; hence, the same are not repeated to avoid prolixity.

**4.** The issue relates to grant of Academic Grade Pay to the appellants, who were Lecturers/Assistant Professors. After financial benefits following such grant were extended to the appellants on or about October, 2009, the same were withdrawn in January, 2010 on the ground that the appellants had not put in the requisite years of service. Thus, the short and simple question emerging for an answer is, whether financial benefits which were extended to a class of teachers voluntarily by the respondents and without any misrepresentation or fraud or fault at the end of such teachers could be withdrawn.

**5.** Learned counsel appearing for the appellants, by referring to the decisions of coordinate Benches of this Court in ***State of Punjab and Ors. v. Rafiq Masih (White Washer) and Ors.***[6] and ***Thomas Daniel v. State of Kerala and Ors.***[7], has strenuously contended

[5] impugned judgment
[6] (2015) 4 SCC 334
[7] 2022 INSC 498

that the appellants' case is covered by clause (v) of paragraph 18 of the former decision and, therefore, no recovery ought to have been made once financial benefits flowing from the grant of Academic Grade Pay were released to them.

**6.** Respondents are not called upon to answer.

**7.** ***Rafiq Masih (White Washer)*** (supra), upon referring to ***Syed Abdul Qadir v. State of Bihar***[8] which in turn relied on various precedents including ***Sahib Ram v. State of Haryana***[9], ***Shyam Babu Verma Ors. v. Union of India***[10], ***Col. B. J. Akkara v. Govt. of India***[11] and other decisions, held as follows:

> "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."

[8] (2009) 3 SCC 475
[9] 1995 Supp (1) SCC 18
[10] (1994) 2 SCC 521
[11] (2006) 11 SCC 709

The appeals were thereafter disposed of noting as follows:

> "19. We are informed by the learned counsel representing the appellant State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

**8.** Importantly, the coordinate Bench decision in ***Rafiq Masih (White Washer)*** (supra) has a prior history and, therefore, cannot be seen in isolation.

**9.** A previous coordinate Bench in ***Chandi Prasad Uniyal and Ors. v. State of Uttarakhand and Ors.***[12] had made the following pertinent observations:

> "**8.** We are of the considered view, after going through the various judgments cited at the Bar, that this Court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered.
> ***
> **13.** We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.
> **14.** We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the

[12] (2012) 8 SCC 417

> mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

**10.** Another coordinate Bench, in ***Rakesh Kumar v. State of Haryana***[13], upon noticing the aforesaid observations in ***Chandi Prasad Uniyal*** (supra) made the following order of reference:

> "In view of an apparent difference of views expressed on the one hand in *Shyam Babu Verma* v. *Union of India* : (1994) 2 SCC 521 and *Sahib Ram* v. *State of Haryana* 1995 Supp (1) SCC 18; and on the other hand in *Chandi Prasad Uniyal* v. *State of Uttarakhand* : (2012) 8 SCC 417, we are of the view that the remaining special leave petitions should be placed before a Bench of three Judges. The Registry is accordingly directed to place the file of the remaining special leave petitions before the Hon'ble the Chief Justice of India for taking instructions for the constitution of a Bench of three Judges, to adjudicate upon the present controversy."

**11.** The reference was ultimately answered by a 3-Judge Bench of this Court in ***State of Punjab v. Rafiq Masih***[14]*.* While holding that there was no conflict in the views expressed in ***Sahib Ram*** (supra) and ***Shyam Babu*** (supra) on the one hand and ***Chandi Prasad Uniyal*** (supra) on the other, it was emphatically observed as follows:

> "8. In our view, the law laid down in *Chandi Prasad Uniyal case* : (2012) 8 SCC 417, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Articles 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provisions speak of the powers of this Court, the former vest a plenary jurisdiction in the Supreme Court in the

[13] (2014) 8 SCC 892
[14] (2014) 8 SCC 883

> matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a court or tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing "complete justice" in any cause or matter."
>
> (emphasis ours)

**12.** What logically follows from a bare reading of the above passage is that ***Chandi Prasad Uniyal*** (supra) was held to have declared the law in exercise of this Court's jurisdiction under Article 136 of the Constitution, which we understand would be binding on all courts under Article 141; whereas ***Sahib Ram*** (supra) and ***Shyam Babu*** (supra) were held to be decisions where this Court had invoked powers under Article 142 thereof.

**13.** Despite the line of decisions following ***Sahib Ram*** (supra) and ***Shyam Babu*** (supra) being held by the 3-Judge Bench to be decisions invoking Article 142 of the Constitution which, according to us, do not have the efficacy of a binding precedent, the coordinate Bench in ***Rafiq Masih (White Washer)*** (supra) did not apply the law laid down in ***Chandi Prasad Uniyal*** (supra) and preferred to abide by the course of action adopted in ***Sahib Ram*** (supra), ***Shyam Babu*** (supra) and ***Syed Abdul Qadir*** (supra).

**14.** We have also found that ***Thomas Daniel*** (supra) neither considers ***Chandi Prasad Uniyal*** (supra) nor the 3-Judge Bench decision in ***Rafiq Masih*** (supra).

**15.** Curiously, not a single precedent has remarked on the applicability of Section 72[15] of the Contract Act, 1872; however, without referring to it, we find that the ratio of ***Chandi Prasad Uniyal*** (supra) draws inspiration from it.

**16.** It is farthest from our mind to cast any shadow of doubt on either of the two decisions of the coordinate Benches in ***Rafiq Masih (White Washer)*** (supra) and ***Thomas Daniel*** (supra). The above discussion is necessitated only for the purpose of highlighting that the law, perhaps, has not developed on correct lines. Be that as it may, while considering the present appeal, we are not required to be guided by either of the aforesaid two decisions, in view of the stark factual distinction and the able guidance that can be drawn from another subsequent decision of a coordinate Bench of this Court in ***High Court of Punjab & Haryana v. Jagdev Singh***[16].

**17.** In ***Jagdev Singh*** (supra), the coordinate Bench considered paragraph 18 of ***Rafiq Masih (White Washer)*** (supra), extracted above, and explained the legal position as follows:

> "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."

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[15] **Liability of person to whom money is paid, or thing delivered, by mistake or under coercion**.-A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

[16] (2016) 14 SCC 267

**18.** Respondents, as appellants before the Division Bench of the High Court, had placed Exhibit R2(c) which contained an undertaking given by the appellants conveying their willingness to permit recovery of such amounts in the event that the pay fixation was found to be erroneous. It was, thus, contended that the respondents had merely corrected the mistake in accordance with the entitlement of the appellants under the applicable rules.

**19.** The contention was accepted by the Division Bench in the impugned judgment. While placing reliance on ***Chandi Prasad Uniyal*** (supra), it was held as follows:

> "32. Apex court was considering a batch of cases relating to recovery and re-fixation of pay of teachers in rectification of mistakes occurred while implementing the 5th and 6th pay commission orders. Apex court while upholding the same, held that unjust enrichment cannot be permitted. It is also pertinent to note that petitioners were not required to perform any additional duties on account of the placement as Associate Professors. Admittedly the petitioners have given their undertaking Ext R2(c) expressing their willingness for re-fixation of pay, refund of excess pay etc., as and when any mistake was detected, as in the cases considered by the apex court. The case of the petitioners do not come under that of exceptional categories. However we are of the view that fairness in action required that a notice was issued to them, before effecting re-fixation and recovery as well as de-designation.
>
> 33. Now that the reasons for re-fixation are already made known to petitioners and their contentions are already in the pleadings before this court, we do not think that issuance of a notice will serve any purpose, especially when we have found that they were not entitled to any benefits as originally granted. Moreover the petitioners approached this court only in 2012, much after the re-fixation of pay and recovery were effected in early 2010. At this stage therefore we are not directing the appellants to undertake the empty formality of issuing notice or opportunity of hearing to petitioners."

**20.** It is, therefore, clear that a mistake was committed in extending financial benefits to the appellants; and this was immediately

withdrawn upon detection of such mistake. Such recovery of the amounts paid by mistake to the appellants, in view of the undertakings given by them, did not warrant interference by the Single Judge in exercise of writ jurisdiction and the Division Bench appears to be right in its interdiction.

**21.** Much emphasis has been placed by learned counsel for the appellants on the letter addressed by the Director (T), Government of India, Ministry of Human Resource Development, Department of Higher Education, to the Directors of all the National Institutes of Technology dated … (sic) March, 2013.

**22.** Sub-paragraph 4 of the last paragraph of such letter reads as follows:

> "iv) The benefits already given would not be recovered from the academic staff of the Institutes as directed by the Hon'ble Court and also as per NIT Councils decision."

**23.** Since the recovery had already been effected from the appellants two years prior to the institution of their writ petition before the writ court, the aforesaid instruction would be of no avail.

**24.** Insofar as the circumstance of hardship canvassed by learned counsel for the appellants is concerned, we need to observe that no such case had been pleaded in the writ petition. In any event, whether recovery of money would result in hardship has to be determined on the facts of each particular case. After all, we cannot presently conceive of a situation where recovery of money from the recipient would not cause hardship. However, for instance, if it is pleaded and proved to the satisfaction of the writ court that entirety of the excess payment

received by the employee has since been spent towards medical treatment and that the employee concerned would face immense hardship in returning such excess payment, or if the same were recovered from him through initiation of appropriate proceedings, in a deserving case the Court would be justified in quashing the notice seeking recovery or refund. This would also be subject to the employee satisfying the Court that the excess payment was not received on account of any misrepresentation or fraud on his part. Since no such case exists here, the contention is rejected.

**25.** Significantly, the appellants have not contended before us that they were, as of right, entitled to the financial benefits flowing from the grant of Academic Grade Pay and that the same was erroneously withdrawn.

**26.** The appeals are, therefore, without merit and, accordingly, stand dismissed.

**27.** Connected applications, if any, shall stand closed.

**28.** Parties shall, however, bear their own costs.

**.....J.**
**(DIPANKAR DATTA)**

**.....J.**
**(SHEEL NAGU)**

**NEW DELHI;**
**SEPTEMBER 23, 2026.**