MEKHA RAM AND OTHERS ETC. ETC.

v.

STATE OF RAJASTHAN AND OTHERS ETC. ETC.

(Civil Appeal Nos. 2229-2234 of 2022)

MARCH 29, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Service Law:

Rajasthan Medical & Health Subordinate Service Rules, 1965 – Restitution – Appellants, working as Auxiliary Nursing & Midwifery or Lab Technician, Multi-Purpose Worker, Accounts Clerk and other similarly situated posts, applied for the course of General Nursing Training, of three years duration – Submission of the applications as in-service candidates and also applied for study leave – Writ petitions by the appellants praying that the study leave sanctioned to them by the competent authority may be treated as on deputation – Single Judge allowed the petitions – Intra-court appeal –Division Bench held that the period spent on training course by the in-service candidates shall not be treated as period on deputation and be treated only on leave whatever due to the candidates – During pendency, under threat of the contempt of the judgment and order passed by the Single Judge,the appellants were paid the amount – Division Bench directed that the State would be at liberty to recover the excess amount paid to appellants during their period of training as a period of leave permissible to him/her in easy equal installments – On appeal,held : Amount paid in excess to the appellants was not due to any mistake on the part of the State authorities – Excess amount was paid pursuant to the order passed by the Single Judge–No one can be permitted to take the benefit of the wrong order passed by the court which has been subsequently set aside by the higher forum/court –No party should be prejudiced because of the order of the court –Order passed by the Single Judge has been set aside by the Division Bench of the High Court and thus, by applying s. 144 CPC also, the amount paid pursuant to the order passed by the Single Judge which has been set aside by the Division Bench is to be refunded/returned by the writ petitioners – Thus, the Division Bench of the High Court justified in reserving liberty in favour of the State to recover the amount paid in excess to

A *the writ petitioners – General Nursing Training Course Rules, 1990 – Code of Civil Procedure,1908 – s.144.*

State of Punjab v. Rafiq Masih **(2015) 4 SCC 334 : [2014] 13 SCR 1343 - held inapplicable.**

B *Indore Development Authority v. Manohar Lal* **(2020) 8 SCC 129 : [2020] 3 SCR 1;** *South Eastern Coalfields Ltd. v. State of M.P.* **(2003) 8 SCC 648 : [2003] 4 Suppl. SCR 651;** *Ouseph Mathai v. M. Abdul Khadir* **(2002) 1 SCC 319 : [2001] 5 Suppl. SCR 118 - referred to.**

Case Law Reference

C

[2014] 13 SCR 1343	**held inapplicable**	**Para 4**
[2020] 3 SCR 1	**referred to**	**Para 5.1**
[2003] 4 Suppl. SCR 651	**referred to**	**Para 5.1**
[2001] 5 Suppl. SCR 118	**referred to**	**Para 6.2**

D

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2229-2234 of 2022.

From the Judgment and Order dated 06.05.2016 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in DB Special Appeal (Writ) Nos. 1883, 1887, 1990 of 2014, D.B. Special Appeal (Writ) No. 289 of 2015, D.B. Special Appeal (Writ) No. 1888 of 2014 & D.B. Special Appeal (Writ) No. 191 of 2015.

E

With

Civil Appeal nos. 2235-2249, 2250-2251, 2252, 2253-2256 of 2022.

F

R.K. Singh, Mrs. Neeraj Singh, Kumar Gaurav, Ms. Ritu Reniwal, Praveen Pathak, Rameshwar Prasad Goyal, Ankur Rastogi, Ms. Priya Rastogi, Mrs. Laxmi Arvind, Advs. for the Appellants.

Dr. Manish Singhvi, Sr. Adv., Arpit Parkash, Milind Kumar, Ms. Ruchi Kohli, Rohit K. Singh, Advs. for the Respondents.

G

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 06.05.2016 passed by the Division Bench of the High Court of Judicature for Rajasthan, Jaipur Bench Jaipur in D.B.

H

Special Appeal (Writ) No. 1883/2014 and other connected appeals, by which the Division Bench of the High Court has allowed the said appeals and has quashed and set aside the respective judgments and orders passed by the learned Single Judge of the High Court and held that the three years Nursing Course by the in-service candidates could not be treated as a period on deputation and be treated only on leave whatever due to the candidates and consequently has reserved the liberty in favour of the State to recover the excess amount paid to the original writ petitioners treating the period of training as a period of leave permissible to him/her in easy equal installments, the original writ petitioners have preferred the present appeals.

2. That the original writ petitioners are working either as ANM (Auxiliary Nursing & Midwifery) or Lab Technician, Multi-Purpose Worker, Accounts Clerk or other similarly situated posts. They are the members of the Rajasthan Medical & Health Subordinate Service Rules, 1965. They applied for the course of General Nursing Training which is of three years duration and is regulated according to the General Nursing Training Course Rules, 1990 (hereinafter referred to as the 'Rules 1990').

2.1 That all the original writ petitioners submitted their applications, in the prescribed proforma as in-service candidates, seeking admission to the course of General Nursing as envisaged under Rule 9 of the Rules 1990. That all the in-service candidates were required to be considered eligible to seek admission provided they fulfilled the criterion for admission and eligibility under Rule 11 of the Rules 1990. All the original writ petitioners submitted their applications for seeking study leave knowing it fully well that joining three years Nursing Course cannot be treated on deputation for the in-service candidates. All the original writ petitioners completed their course or some of them were either doing their internship or a few, after completion of their internship, filed writ petitions before the learned Single Judge of the High Court and prayed that the study leave sanctioned to them by the competent authority may be treated as on deputation. That the learned Single Judge allowed the batch of writ petitions with the following directions:

> "Looking to the aforesaid, these writ petitions are being disposed of with the following directions:
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> 1. Respondents are directed to comply with the observations and expectations of the Hon'ble Apex Court as given in the case of Sushil Sharma (supra) [State of Rajasthan vs. Sushil

Sharma, Civil Appeal No. 5283/2001, dated 10.08.2001], thereby, they will not allow benefit of deputation allowance to anyone in violation of rule 112 read with rule 97 of the RSR. This is irrespective of the categories of the post in the respondent department;

2. If there is shortage of Junior Specialist, endeavour should be to amend the Rules so that direct recruitment can be made, as presently aforesaid post is filled up by promotion only. However, on the pretext of shortage of Junior Specialist, respondents cannot be allowed to violate or circumvent the rules. This is more so when it goes even against the observations and expectations of the Hon'ble Apex Court in the case of Sushil Sharma (supra). The respondents will accordingly allow study leave and benefit thereupon as per rule 111 and 112 read with rule 97 of the RSR;

3. Since for many posts, benefit of study leave with full salary has been allowed, hence, to avoid discrimination, respondents have agreed to extend similar benefit to the petitioners also, however, arrangement aforesaid would be limited to those who have already joined the training course of GNM and now onwards nobody would be allowed study leave benefit in violation of the provision of RSR;

4. Compliance of the aforesaid order may be made within a period of one month from the date of receipt of copy of this order."

2.2 That thereafter the State preferred intra-court appeals before the Division Bench. The Division Bench permitted the State to file review applications. The State filed review applications before the learned Single Judge, which came to be dismissed.Subsequently, the State again filed intra-court appeals before the Division Bench against the judgment(s) and order(s) passed by the learned Single Judge, allowing the writ petitions and holding that the original writ petitioners are entitled to treat their period of training as the period on leave permissible to him/her. By the impugned common judgment and order, the Division Bench of the High Court has allowed the intra-court appeals and while approving the earlier decision of the learned Single Judge has held that the period spent on training course by the in-service candidates shall not be treated as a

period on deputation and be treated only on leave whatever due to the candidates. That as during the pendency of the intra-court appeals, under threat of the contempt of the judgment and order passed by the learned Single Judge, the original writ petitioners were paid the amount and holding that the period of training is to be treated as period on leave permissible to him/her, the Division Bench also directed that the State shall be at liberty to recover the excess amount paid to the original writ petitioners during their period of training as a period of leave permissible to him/her in easy equal installments.

2.3 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench of the High Court reserving liberty in favour of the State to recover the excess amount paid, the original writ petitioners have preferred the present appeals.

3. At the outset, it is required to be noted that this Court issued notice in the present special leave petitions/appeals limited to the aspect of the recovery of the amounts from the original writ petitioners, as directed in the impugned judgment and in the meanwhile directed stay of recovery. In that view of the matter, the only issue which is now required to be considered is, whether there shall be recovery of the amounts from the original writ petitioners, as directed in the impugned judgment and order passed by the Division Bench of the High Court.

4. Shri R.K. Singh, learned Advocate appearing on behalf of the original writ petitioners has heavily relied upon the decision of this Court in the case of *State of Punjab v. Rafiq Masih, reported in (2015) 4 SCC 334*. Relying upon the aforesaid decision, it is vehemently submitted that as observed and held by this Court, recovery from the employees belonging to Class III and Class IV service (Group C and Group D service) is impermissible.

4.1 Learned counsel appearing on behalf of the original writ petitioners has prayed and submitted that as the respective original writ petitioners are serving on Class III and Class IV posts, the amount already paid in excess may not be recovered by the State. In the alternative, it is prayed that the original writ petitioners may be given reasonable monthly installments to repay the amount which is paid in excess to them.

5. Dr. Manish Singhvi, learned Senior Advocate appearing on behalf of the State has submitted that the decision of this Court in the case of *Rafiq Masih (supra)*, which has been relied upon by the learned

counsel appearing on behalf of the original writ petitioners, is not applicable to the facts of the case on hand. It is submitted that in the aforesaid case the amount was paid to the employees mistakenly by the State/State authorities which was sought to be recovered and under those circumstances this Court observed and held that the recovery of the excess amount paid is impermissible in case of employees belonging to Class III and Class IV service (Group C and Group D service). It is submitted that in the present case, it is not the case where the amount in excess was paid mistakenly by the State or the State authorities. Rather the excess amount was paid pursuant to the order passed by the learned Single Judge, under the threat of the contempt proceedings, which order has now been set aside by the Division Bench. It is submitted that once the order passed by the learned Single Judge, pursuant to which the original writ petitioners were paid the amount, came to be set aside by the Division Bench, the necessary consequences shall follow and on the principle of restitution, the State shall be entitled to recover the amount paid in excess.

5.1 Reliance is placed on the decision of this Court in the case of *Indore Development Authority v. Manohar Lal, reported in (2020) 8 SCC 129 (paragraphs 334 to 336)* and the decision of this Court in the case of *South Eastern Coalfields Ltd. v. State of M.P., reported in (2003) 8 SCC 648* (paragraphs 25 to 30), on the principle of restitution.

5.2 Making the above submissions and relying upon the aforesaid decisions, more particularly the decisions of this Court on the principle of restitution, learned Senior Advocate appearing on behalf of the State has submitted that in the facts and circumstances of the case, the Division Bench of the High Court has not committed any error in permitting the State to recover the excess amount paid. However, the learned Senior Advocate has fairly stated that the original writ petitioners may be given reasonable installments, which even the Division Bench has observed in the impugned judgment.

6. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that in the present case the amount paid in excess to the appellants was not due to any mistake on the part of the State/State authorities. The excess amount has been paid pursuant to the order passed by the learned Single Judge, which has been subsequently set aside by the Division Bench. Therefore, on

quashing and setting aside the judgment and order passed by the learned Single Judge under which the original writ petitioners were paid the excess amount, the necessary consequences must follow. Therefore, considering the fact that the amount already paid in excess was not paid by the State mistakenly but was paid pursuant to the order passed by the learned Single Judge which has been set aside subsequently, the decision of this Court in the case of *Rafiq Masih (Supra)* shall not be applicable. The said decision of this Court may be applicable only in a case where the amount has been paid by the State/State Authorities mistakenly and it is found that there was no fault and/or any misrepresentation on the part of the employee and that the concerned employee is not found responsible for such excess amount paid mistakenly. The amount paid in excess pursuant to the order passed by the learned Single Judge which has been set aside by the Division Bench has to be refunded and/or returned by the original writ petitioners which the State is entitled to recover from them on the principle of restitution.

6.1 At this stage, the decision of this Court in the case of *Indore Development Authority (supra)* on principle of restitution is required to be referred to. In the said decision, a Constitution Bench of this Court after considering the earlier decision in the case of *South Eastern Coalfields (supra)* and other decisions on the principle of restitution, has observed and held in paragraphs 335 to 336 as under:

In re : Principle of restitution

"335. The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In *South Eastern Coalfields Ltd.* v. *State of M.P.* [*South Eastern Coalfields Ltd.* v. *State of M.P.*, (2003) 8 SCC 648], it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of restitution. It is rather a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the

principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In exercise of such power, the courts have applied the principle of restitution to myriad situations not falling within the terms of Section 144 CPC. What attracts applicability of restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order. This Court observed in *South Eastern Coalfields* [*South Eastern Coalfields Ltd.* v. *State of M.P.*, (2003) 8 SCC 648] thus: (SCC pp. 662-64, paras 26-28)

> "*26*. In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see *Zafar Khan* v. *Board of Revenue, U.P.* [*Zafar Khan* v. *Board of Revenue, U.P.*, 1984 Supp SCC 505]). In law, the term "restitution" is used in three senses : (*i*) return or restoration of some specific thing to its rightful owner or status; (*ii*) compensation for benefits derived from a wrong done to another; and (*iii*) compensation or reparation for the loss caused to another. (See *Black's Law Dictionary*, 7th Edn., p. 1315). *The Law of Contracts* by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:
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> 'Often, the result under either meaning of the term would be the same. … Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery

is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.'

The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. …

27. … This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (*A. Arunagiri Nadar* v. *S.P. Rathinasami* [*A. Arunagiri Nadar* v. *S.P. Rathinasami*, 1970 SCC OnLine Mad 63]). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. … the concept of restitution *is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order* even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

(emphasis supplied)

336. In *State of Gujarat* v. *Essar Oil Ltd.* [*State of Gujarat* v. *Essar Oil Ltd.*, (2012) 3 SCC 522 : (2012) 2 SCC (Civ) 182] , it was observed that the principle of restitution is a remedy against unjust enrichment or unjust benefit. The Court observed : (SCC p. 542, paras 61-62)

> "*61*. The concept of restitution is virtually a common law principle, and it is a remedy against unjust enrichment or unjust benefit. The core of the concept lies in the conscience of the court, which prevents a party from retaining money or some benefit derived from another, which it has received by way of an erroneous decree of the court. Such remedy in English Law is generally different from a remedy in contract or in tort and falls within the third category of common law remedy, which is called quasi-contract or restitution.
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> *62*. If we analyse the concept of restitution, one thing emerges clearly that the obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit (see *Halsbury's Laws of England*, 4th Edn., Vol. 9, p. 434)."

In the said decision, it is further observed and held that the restitution principle recognizes and gives shape to the idea that advantages secured by a litigant, on account of orders of court, *at his behest*, should not be perpetuated.

6.2 In the case of *Ouseph Mathai v. M. Abdul Khadir, reported in (2002) 1 SCC 319*, it is observed and held that after the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay.

6.3 Even otherwise, no one can be permitted to take the benefit of the wrong order passed by the court which has been subsequently set aside by the higher forum/court. As per the settled position of law, no party should be prejudiced because of the order of the court.

7. Even, Section 144 of the Code of Civil Procedure provides for restitution. Section 144 of the CPC reads as under:

> "144. Application for restitution – (1) Where and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall,

on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are property consequential on such variation, reversal, setting aside or modification of the decree or order.

Explanation – For the purposes of sub-section (1) the expression "Court which passed the decree or order shall be deemed to include,

(a) Where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) Where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) Where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

2. No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)."

8. In the present case, the order passed by the learned Single Judge has been set aside by the Division Bench of the High Court and therefore by applying Section 144 CPC also, the amount paid pursuant to the order passed by the learned Single Judge which has been set aside by the Division Bench is required to be refunded/returned by the original writ petitioners.

Therefore, in the facts and circumstances of the case, narrated hereinabove, the Division Bench of the High Court is absolutely justified

A in reserving liberty in favour of the State to recover the amount paid in excess to the original writ petitioners. It is required to be noted that even while reserving liberty to recover the amount paid in excess, the Division Bench has observed that the same be recovered in easy equal installments.

9. In view of the above and for the reasons stated above, the B Division Bench of the High Court has not committed any error in reserving liberty in favour of the State to recover the amount paid in excess to the original writ petitioners. However, at the same time, considering the prayer made on behalf of the original writ petitioners to recover the amount in easy equal installments, we direct that whatever amount is paid in excess to the original writ petitioners, pursuant to the order passed by the learned C Single Judge, be recovered from the original writ petitioners in thirty-six equal monthly installments, to be deducted from their salary commencing from April, 2022.

10. The instant appeals are accordingly disposed of in the aforesaid terms. No costs.

Nidhi Jain Appeals disposed of.
(Assisted by : Neha Sharma, LCRA)