

State Of Punjab & Ors vs Rafiq Masih (White Washer) on 8 July, 2014

Equivalent citations: 2014 AIR SCW 6256, 2014 (8) SCC 883, (2014) 5 SERVLR 485, (2014) 8 SCALE 613, (2015) 1 ESC 33, (2014) 142 FACLR 638, (2014) 4 PAT LJR 36, (2014) 4 SCT 138, (2014) 3 JLJR 461, (2015) 1 JCR 122 (SC), (2014) 3 SERVLJ 136, (2014) 5 ALL WC 4818, AIR 2015 SUPREME COURT 1267

Bench: Arun Mishra, R.K. Agrawal, H.L. Dattu

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.11684 of 2012

STATE OF PUNJAB & ORS.

PETITIONER(S)

VERSUS

RAFIQ MASIH (WHITE WASHER)

RESPONDENT(S)

WITH

SPECIAL LEAVE PETITION No.....CC No. 14663 of 2010
SPECIAL LEAVE PETITION (C) No. 21554 of 2013
SPECIAL LEAVE PETITION No.....CC No. 20144 of 2010
SPECIAL LEAVE PETITION No.....CC No. 9303 of 2011
SPECIAL LEAVE PETITION (C) No. 30751 of 2012
SPECIAL LEAVE PETITION (C) No. 15307 of 2013
SPECIAL LEAVE PETITION No.....CC No. 15876 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16190 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16326 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16327 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16350 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16309 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16325 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16303 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16548 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16723 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16594 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16580 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16582 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16850 of 2011
SPECIAL LEAVE PETITION No.....CC No. 16904 of 2011
SPECIAL LEAVE PETITION No.....CC No. 17204 of 2011
SPECIAL LEAVE PETITION No.....CC No. 17193 of 2011

SPECIAL LEAVE PETITION No.....CC No. 17201 of 2011
SPECIAL LEAVE PETITION No.....CC No. 17192 of 2011
SPECIAL LEAVE PETITION (C) No. 30473 of 2011
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SPECIAL LEAVE PETITION (C) NO. 18880 of 2013
SPECIAL LEAVE PETITION (C) NO. 8086 of 2014
SPECIAL LEAVE PETITION (C) ... of 2014 CC NO. 3626
SPECIAL LEAVE PETITION (C) NO. 8103 of 2014

AND

WITH

SPECIAL LEAVE PETITION (C) NO. 21492 of 2013

O R D E R

1. These batch of matters are placed before us for authoritative pronouncement on the apparent difference of opinion expressed on one hand in the cases of Shyam Babu Verma and Ors. v. Union of India & Ors. (1994) 2 SCC 521 and Sahib Ram Verma v. State of Haryana (1995) Supp. 1 SCC 18 and on the other hand, in Chandi Prasad Uniyal and Ors. v. State of Uttarakhand & Ors. (2012) 8 SCC 417. The order of reference made by this Court reads as under :

"In View of an apparent difference of views expressed on the one hand in Shyam Babu Verma and Ors. vs. Union of India & Ors. (1994) 2 SCC 521 and Sahib Ram Verma vs. State of Haryana (1995) Supp. 1 SCC 18; and on the other hand in Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand & Ors. (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."

2. The issue in this matter pertains to the recovery of excess money from the pensionary benefit of the respondent-white washer, on account of a wrong fixation of pay by the Petitioner No. 4- The Executive Engineer. The respondent approached the High Court by filing a writ petition. The question of law for consideration before the High Court was:

whether the Government is entitled to recover from an employee any payment made in excess of what the employee is otherwise entitled to, in the absence of any fraud or misrepresentation on the part of the employee. The High Court relies on a Full Bench decision, and directed not to recover the excess amount from the respondent.

3. We have heard Shri L.N. Rao, learned Additional Solicitor General and the learned counsel for the respondents.

4. To answer the reference, the decisions need to be considered.

5. In Shyam Babu Verma's case (Supra), this Court while observing that the petitioners-therein were not entitled to the higher pay scales, had come to the conclusion that since the amount has already been paid to the petitioner, for no fault of theirs, the said amount shall not be recovered by the

respondent-Union of India. The observations made by this Court in the said case are as under:

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them.

(emphasis supplied)."

6. In Sahib Ram Verma's case (Supra), this Court once again held that although the appellant-therein did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid his salary on the revised pay scale. This Court further observed that this was not on account of mis-representation made by the appellant but by a mistake committed by the Principal. In a fact situation of that nature, the Court was pleased to observe that the amount already paid to the appellant need not be recovered. In the words of the Court:

"Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which appellant cannot be held to be fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

7. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra-ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice.

8. In Chandi Prasad Uniyal's case (Supra), a specific issue was raised and canvassed. The issue was whether the appellant-therein can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Court after taking into consideration the various decisions of this Court had come to the conclusion that even if by mistake of the employer the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered. While holding so this Court observed at paragraphs 14 and 16 as under:

"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 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 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.

16. The appellant in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However we order that excess payment made be recovered from the appellants salary in 12 equal monthly instalments.”

9. In our view, the law laid down in Chandi Prasad Uniyal's case, 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 Article 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 supreme court in the 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. The word ‘complete justice’ was fraught with uncertainty until Article 142 of the Constitution received its first interpretation in *Prem Chand Garg v. Excise Commissioner, U.P.*, AIR (1963) SC 996 which added a rider to the exercise of wide extraordinary powers by laying down that though the powers are wide, the same is an ancillary power and can be used when not expressly in conflict with the substantive provisions of law. This view was endorsed by a Nine-Judges Bench in *Naresh Shridhar Mirajkar v. State of Maharashtra*, (1966) 3 SCR 744 reiterated by a Seven Judge Bench in *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602 and finally settled in the *Supreme Court Bar Association v. Union of India*, (1998) 4 SCC 409.

10. Article 136 of the Constitution of India, confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special jurisdiction and can be best described in the words of this Court in *Ramakant Rai v. Madab Rai*, (2003) 12 SCC 395, "It is a residuary power, it is extraordinary in its amplitude, its limits when it chases injustice, is the sky itself". Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vest a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in the case of *Union of India v. Karnail Singh*, (1995) 2 SCC 728, it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution.

11. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice oriented approach as against the strict rigors of the law. The directions issued by the court can normally be categorized into one, in the nature of moulding of relief and the other, as the declaration of law. 'Declaration of Law' as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the Highest Court of the land. This Court in the case of *Indian Bank v. ABS Marine Products (P) Ltd.*, 2006 5 SCC 72, *Ram Pravesh Singh v. State of Bihar*, (2006) 8 SCC 381 and in *State of U.P. v. Neeraj Awasthi* (2006) 1 SCC 667, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court have compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.

12. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.

13. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for its appropriate disposal.

Ordered accordingly.

.....J. (H.L. DATTU)J. (R.K. AGRAWAL)J. (ARUN MISHRA) NEW DELHI;

JULY 08, 2014.

ITEM NO.101 & 126 COURT NO.2 SECTION IVB S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS (Arising out of judgment and order dated 17.01.2011 in civil Writ Petition No. 16277 of 2010 passed by the High Court of Punjab and Haryana at Chandigarh) STATE OF PUNJAB & ORS. Petitioner(s) VERSUS RAFIQ MASIHI (WHITE WASHER) Respondent(s) (With office report) WITH S.L.P. No.....CC No. 14663 of 2010 (With c/delay in filing SLP and office report) (With office report)] S.L.P. No.....CC No. 20144 of 2010 (With c/delay in filing SLP and office report) S.L.P. No.....CC No. 9303 of 2011 (With c/delay in filing/refiling SLP and office report) (With c/delay in filing/refiling SLP and office report) (With office report) S.L.P. No.....CC No. 15876 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16190 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16326 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16327 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16350 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16309 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16325 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16303 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16548 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16723 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16594 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16580 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16582 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16850 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 16904 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17204 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17193 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17201 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17192 of 2011 (With c/delay in filing/refiling SLP and office report) (With prayer for interim relief and office report) S.L.P. No.....CC No. 17388 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17534 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17507 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17508 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17709 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17711 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17735 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17798 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17888 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17846 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 17835 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18261 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18286 of 2011 (With c/delay in

filing/refiling SLP and office report) S.L.P. No.....CC No. 18227 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18312 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18337 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18310 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18423 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18536 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18527 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18526 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18525 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18524 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18535 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18628 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18630 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18767 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18784 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18805 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18802 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18796 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18769 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18857 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18834 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 18960 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19116 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19236 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19527 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19590 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19552 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19556 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19580 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19594 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19597 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19599 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19601 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19663 of 2011 (With c/delay in filing/refiling SLP and office report) (With office report) S.L.P. No.....CC No. 19727 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19864 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 19837 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 20024 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 20022 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 20048 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 20291 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 20454 of 2011 (With c/delay in filing/refiling SLP and office report) (With office report) S.L.P. No.....CC No. 20794 of 2011 (With c/delay in filing/refiling SLP and office report) S.L.P. No.....CC No. 20891 of 2011 (With c/delay in

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE R.K. AGRAWAL
HON'BLE MR. JUSTICE ARUN KUMAR MISHRA For Petitioner(s) Mr. L.N. Rao,
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Ms. Naresh Bakshi, Adv.

Mrs. Rachana Joshi Issar, Adv.

Mr. Vineet Bhagat, Adv.

Dr.(Mrs.) Vipin Gupta, Adv.

Mr. Ansar Ahmad Chaudhary, Adv.

Mr. Dinesh Verma, Adv.

Mr. Subhasish Bhowmick, Adv.

Mr. Satyendra Kumar, Adv.

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Mr. Abhishek Atrey, Adv.

Mr. Balbir Singh gupta, Adv.

Mr. Rahul Gupta, adv.

Mr. Sarad Kumar Singhanian, Adv.

Mr. S.L. Aneja, Adv.

UPON hearing the counsel the Court made the following O R D E R Without answering the reference, the matters are sent back to the Division bench for its appropriate disposal.

[Charanjeet Kaur]
Court Master

[Vinod Kulvi]
Asstt. Registrar

[Signed order is placed on the file]