2026:DHC:7333

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21th July, 2026.
Pronounced on: 31st August, 2026.
Uploaded on: 31st August, 2026.

\+ W.P.(C) 558/2019 & CM APPL. 4005/2019

SC SHARMA AND ORS. .....Petitioners

Through: Mr. Bharat Bhushan and Mr. C. Shekher Malhotra, Advocates with Mr. S.C. Sharma, (Petitioner No. 1-person.

versus

SHIVAJI COLLEGE AND ANR. .....Respondents

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Anurag Dayal Mathur and Mr. Ankit Singh, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

The Controversy

1. The Petitioners, former teaching and non-teaching employees of Shivaji College who retired between 2001 and 2011, challenge the recovery of amounts alleged to have been overpaid to them from the College Provident Fund. Their grievance is directed, in particular, against the adjustment of those alleged dues against the additional gratuity that became payable upon enhancement of the gratuity ceiling.

Factual Background

2. The College maintains its own Provident Fund account. Subscribers'

contributions are invested by the College in fixed deposits, and the interest earned thereon is distributed among the subscribers. In 2007, certain anomalies were noticed in the Provident Fund accounts. The Governing Body, accordingly, decided to have the accounts examined, leading eventually to a Special Audit for the period 1990-91 to 2009-10.

3. The Special Audit Report was received by the College on 6th June, 2011. It pointed to various errors and anomalies in the Provident Fund accounts, including incorrect recording of fixed-deposit transactions and interest, omission of subscribers' names, totalling and balancing mistakes, erroneous accounting entries and carry-forward errors. These irregularities resulted in discrepancies in the individual Provident Fund statements.

4. The Provident Fund Committee thereafter accepted the Special Audit Report and resolved to rectify the anomalies identified in it. In December 2012, it further decided that corrected Provident Fund statements should be prepared for each subscriber. A meeting of the Provident Fund subscribers was then held on 20th January, 2014, at which the anomalies and the proposed course of rectification were explained.

5. On the basis of the recast accounts, the College computed that INR 58,26,165 was payable to certain retired subscribers, while INR 65,68,839 was recoverable from others who had allegedly been overpaid. Some retired employees thereafter deposited an aggregate amount of INR 17,60,404.41. Of this, INR 13,91,167.85 was distributed *pro rata* among subscribers whose accounts showed amounts due and payable.

6. Recovery notices were issued to the Petitioners in 2014, followed by reminders in 2017. The amounts demanded were substantial. By way of illustration, INR 1,39,435.52 was claimed from S.C. Sharma, INR

4,81,662.73 from U.S. Chauhan, and INR 3,58,136.96 from P.D. Sharma. The notices described these amounts as excess payments made on account of interest credited to their Provident Fund accounts.

7. The dispute sharpened when the gratuity ceiling was enhanced and additional gratuity became payable to the Petitioners. The College adjusted the alleged Provident Fund dues against those enhanced gratuity amounts. Thus, in the case of S.C. Sharma, the entire enhanced gratuity of INR 74,169 was adjusted against the alleged Provident Fund liability of INR 1,39,435, leaving a further demand of INR 65,266. In the case of B.P. Maithani, INR 91,171 was adjusted against gratuity of INR 35,075, leaving a balance demand of INR 56,096. In the case of G.C. Mittal, INR 92,591 was adjusted against gratuity of INR 97,825, and the remaining balance of INR 5,234 was credited to his account.

8. On 28th January, 2019, notice was issued in CM APPL. 4005/2019 filed in the present petition. By the same order, further recovery against the Petitioners was stayed until further orders.

Petitioners' Contentions

9. The Petitioners dispute the demands. They submit that the Provident Fund accounts were maintained entirely by the College. Annual statements of account were furnished to them, and those accounts were audited from time to time. Their Provident Fund balances were thereafter released upon retirement. The Petitioners emphasise that they had no role in calculating or finalising the amounts paid to them. Nor is there any allegation that the alleged excess payments were obtained by fraud, misrepresentation or suppression on their part.

10. Reliance is placed on ***State of Punjab v. Rafiq Masih (White***

***Washer) & Ors.*[1], *Thomas Daniel v. State of Kerala & Ors.*[2] *and Jogeswar Sahoo & Ors. v. District Judge, Cuttack & Ors.*[3]** The Petitioners contend that these decisions prohibit recovery of excess payments where the employee has not practised fraud or misrepresentation, particularly when recovery is attempted after retirement or after a long lapse of time and would operate harshly or inequitably.

College's Contentions

11. The College does not allege that the Petitioners were responsible for the excess credits by reason of any incorrect information, fraud or misrepresentation. Its defence rests on the nature of the Provident Fund. The College submits that it maintains a separate Provident Fund account and does not subscribe to the General Provident Fund administered by the Government of India. Amounts deposited in the Fund are invested in fixed deposits with nationalised banks, and the interest earned is distributed among subscribers at the rate notified by the Central Government from time to time. Since the Government does not contribute to the Fund, the College characterises it as a pooled fund belonging to the subscribers themselves.

12. The College also relies on the statutory and regulatory framework governing the Fund. It submits that the administration of the Fund, including the rate of interest payable to subscribers, is subject to applicable statutory provisions and directions issued by the Central Government. In this regard, reliance is placed on Section 8(2) of the Provident Fund Act, 1925, as made applicable to the University of Delhi, the communication dated 16th February, 1999 issued by the Department of Education, Government of

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[1] (2015) 4 SCC 334.
[2] 2022 SCC OnLine SC 536.

India, and the University Executive Council resolution dated 28th September, 2001 adopting the same.

13. According to the College, the Special Audit and the subsequent recasting of accounts were undertaken only to correct discrepancies in the Fund for the period 1990-91 to 2009-10. The audit was not initiated behind the employees' back. The Teachers' Association had requested an audit, and some of the Petitioners had supported that request. The Special Audit Report was later accepted by the Provident Fund Committee, which resolved to rectify the anomalies and recast the individual accounts.

14. The College further refers to the meeting of Provident Fund subscribers held on 20th January, 2014, where the anomalies identified in the Special Audit and the proposed method of rectification were explained. The recast accounts showed amounts payable to some subscribers and amounts recoverable from others. On that basis, the Provident Fund Committee resolved to recover amounts from subscribers who had been overpaid and to release amounts to those whose accounts disclosed credit balances.

15. The College seeks to distinguish ***Rafiq Masih*** on the ground that the instant case concerns a pooled Provident Fund. It submits that an excess credit to one subscriber correspondingly reduces the amount available for distribution to other subscribers whose recast accounts disclose shortfalls. Recovery, according to the College, is therefore necessary not merely to restore money to the College, but to enable payment to subscribers who were underpaid. It points out that some retired employees deposited an aggregate amount of INR 17,60,404.41, of which INR 13,91,167.85 was distributed on a *pro rata* basis among subscribers to whom amounts were

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[3] 2025 SCC OnLine SC 724.

found due and payable. The College also submits that several similarly placed employees accepted the recast accounts and returned the amounts demanded, whereas the Petitioners have resisted repayment.

16. On delay in adjustments, the College submits that the expiry of time for instituting recovery proceedings does not extinguish the underlying liability. It merely bars enforcement through the ordinary process of law. According to the College, where any amount otherwise payable to an employee remains in its hands, an outstanding liability may be adjusted against that amount without filing a separate recovery action. Such adjustment, it submits, is distinct from coercive recovery and is not barred merely because a suit or other proceeding for recovery may have become time-barred.

Analysis

Scope of the Controversy and Issues requiring Determination

17. The decision to undertake the Special Audit and the authority of the College to correct its books and ascertain the true position of the Provident Fund are not in issue. Once discrepancies of this kind were noticed, reconciliation of the accounts was necessary. Nor is the Court called upon to decide the entitlement of subscribers whose recast accounts disclose credit balances. The controversy is narrower: whether, after the Petitioners' Provident Fund accounts had been settled and they had retired, the College could recover debit balances worked out later, and whether such recovery could be made by withholding or appropriating gratuity or other retiral dues otherwise payable to them.

Governing Principles on Recovery of Excess Payments

18. ***Rafiq Masih*** does not proceed on the footing that a mistaken payment,

once made, becomes an entitlement of the employee. It recognises that the employer may otherwise have a right to recover an amount paid in excess but restrains the exercise of that right where recovery would operate inequitably against an employee who was neither responsible for, nor had induced, the excess payment. The Supreme Court identified, among such situations, recovery from retired employees and cases where excess payment had continued for a period exceeding five years before the order of recovery. It also preserved a broader category where recovery, having regard to the circumstances, would be so harsh or iniquitous as to outweigh the employer's claim. The principle is, therefore, one of equitable restraint: it protects an employee who is not at fault from a recovery which, by reason of the lapse of time or other surrounding circumstances, would operate harshly or inequitably.

19. The same approach was carried forward in ***Thomas Daniel***, where the excess payment arose from an erroneous interpretation of the applicable service rules and not from any fraud or misrepresentation by the employee. The Supreme Court reiterated that relief against recovery in such cases rests in equity and is intended to prevent the hardship of reclaiming, after a considerable lapse of time, amounts which the employee had received without fraud. The employee had retired and the proposed recovery was sought to be sustained against benefits flowing from increments granted many years earlier. In those circumstances, the attempt to recover the amount was held to be unjustified.

20. More recently, in ***Jogeswar Sahoo***, the Supreme Court applied the same principle where financial benefits had been credited to the employees in 2017, they had superannuated by 2020, and recovery was directed only in

2023. The Court also noted that no opportunity of hearing had been afforded before the recovery was ordered and, applying the settled principles governing recovery of excess payments, found the recovery unsustainable.

21. The protection recognised in these decisions is not confined to excess payments arising from pay fixation. In ***Umesh Chand Tyagi v. UOI & Ors.***[4], a Division Bench of this Court applied ***Rafiq Masih*** to an erroneous credit in the petitioner's General Provident Fund account. The Court found that the credit was the result of a *bona fide* mistake by the respondents, that no fraud, misrepresentation or misstatement was attributable to the petitioner, and that the error had remained undetected until his superannuation. The consequent deductions from the petitioner's GPF account or retirement dues were therefore quashed. Although the factual setting was not identical, the decision is significant because it shows that the character of the account does not, by itself, exclude the equitable protection recognised in ***Rafiq Masih***.

<u>Application of the principles to the Petitioners</u>

22. The present case bears the features that make delayed recovery inequitable. The Provident Fund accounts were maintained by the College; the interest was calculated and credited by it; and statements were issued to the subscribers from year to year. On retirement, the accumulated balances were released to the Petitioners as amounts then found payable. The record also contains clearance/no-dues documentation in respect of at least one Petitioner, which supports the Petitioners' case that their terminal dues had been treated as settled. There is no allegation that the Petitioners furnished incorrect information, influenced the calculations, or otherwise contributed

to the alleged excess credits. The liabilities now sought to be enforced arose only after accounts spanning nearly two decades were reopened and reconstructed.

23. The College is right in pointing out that the Special Audit was initiated in 2007 and that some employees may have supported the examination of the accounts. It is also correct that the anomalies and the proposed method of rectification were later explained to the subscribers. But these facts do not carry the matter far enough. They do not show that the Petitioners were aware that their own accounts contained excess credits, or that they accepted the liabilities later computed against them. A request for verification, or participation in a general process of reconciliation, cannot be converted into an admission of individual liability.

24. The minutes dated 10th December, 2012 proposed that payments made at the time of retirement would thereafter be treated as provisional and subject to rectification. Such a later administrative decision could govern future settlements but could not convert earlier final settlements into provisional payments or be applied retrospectively to payments already made to the Petitioners, all of whom had retired before that decision was taken.

25. The position of subscribers who were underpaid deserves consideration, but it cannot be viewed in isolation. The Petitioners too are retired subscribers. They received amounts reflected as payable in accounts prepared, audited and settled by the College, and were entitled to arrange their affairs on that basis. Where both sets of subscribers are without fault, the consequences of a prolonged accounting failure cannot be shifted

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[4] W.P.(C) 12434/2022, decided on 6th May, 2025 (Delhi High Court).

entirely to those whose accounts, upon retrospective reconstruction, came to show debit balances.

The College's Pooled-Fund Defence

26. The pooled character of the Provident Fund gives the College a legitimate concern. Subscribers who received less than their entitlement cannot be ignored. But that does not answer whether the College could, after the Petitioners' retirement, reopen settled accounts and recover amounts subsequently found due.

27. The audit discrepancies were not a simple case of shifting amounts from one subscriber's account to another. They included errors in investments, interest entries, totals, carry-forwards, omitted subscriber names and treatment of contributory provident fund amounts. These were systemic accounting and administrative failures. Even if an excess credit in one account contributed to a shortfall elsewhere, an underpaid subscriber's claim would lie against the Fund and its administrator. It would not, for that reason alone, become a direct claim against another subscriber whose account had already been settled by the College.

28. Nor does the fact that some employees deposited the amounts demanded alter the position. Their payments may reflect acceptance of the recast accounts, prudence, or a desire to avoid dispute. Their conduct cannot bind the Petitioners or confer on the College a power that must otherwise exist in law.

Limitation, Recovery and Adjustment against Gratuity

29. The limitation argument does not advance the College's case. It is unnecessary to decide whether the claim stood extinguished or was only barred from enforcement by legal proceedings. Even on the latter

assumption, a unilateral adjustment must be supported by a legal, contractual or statutory right.

30. That requirement cannot be avoided by describing the action as an '*adjustment*' rather than a '*recovery*'. The College retained enhanced gratuity otherwise payable to the Petitioners and applied it towards disputed Provident Fund demands arising from alleged excess payments made years earlier. In substance, therefore, an amount payable to the Petitioners as a retirement benefit was withheld to satisfy those demands.

31. Gratuity is an independent statutory retirement benefit governed by the Payment of Gratuity Act, 1972. The Act permits forfeiture only in the limited circumstances set out in Section 4(6), namely where employment is terminated for the specified misconduct. The present demands arise from a subsequent recasting of Provident Fund accounts, not from termination for misconduct. Section 7 provides the mechanism for determination and adjudication of gratuity disputes. Section 14 gives the Act overriding effect, and Section 13 protects gratuity from attachment in execution of court orders/decrees. These provisions leave little room for an employer to appropriate gratuity unilaterally towards a disputed claim of this nature.

32. The Provident Fund framework relied upon by the College may regulate maintenance of accounts, investment of contributions and crediting of interest. It does not, by itself, authorise recovery of a later-determined debit balance by appropriating an independent statutory benefit such as gratuity. The College has not shown any rule, undertaking or contractual term permitting such adjustment. The fact that enhanced gratuity was payable through the College did not make it available for unilateral set-off against the disputed Provident Fund demand.

Conclusion and Relief

33. For these reasons, the recovery sought from the Petitioners, whether by direct demand or by adjustment against gratuity, cannot be sustained. The writ petition is allowed in the following terms:

a. The recovery notices issued to the Petitioners pursuant to the Special Audit for the period 1990-91 to 2009-10, along with all consequential demands and adjustments, are set aside.

b. The College shall not effect any further recovery from the Petitioners towards amounts found recoverable under the Special Audit, whether from gratuity or from any other retiral dues.

c. Within four weeks from the date of pronouncement of this judgment, the College shall prepare and communicate to each Petitioner a statement specifying the amount, if any, recovered from or adjusted against that Petitioner under the impugned demands.

d. Any amount so recovered, adjusted, or withheld from enhanced gratuity, shall be refunded or released to the concerned Petitioner within eight weeks thereafter, together with interest at 6% per annum from the date of recovery, adjustment or withholding until payment.

34. The relief granted is confined to the Petitioners before this Court. This judgment does not re-open payments made by, or transactions concluded with, subscribers who have not challenged the recovery.

35. The present petition, along with any pending application(s), is disposed of in the above terms.

SANJEEV NARULA, J

AUGUST 31, 2026/*ab*