

A.F.R.

Neutral Citation No. - 2025:AHC:41250

Court No. - 4

1. **Case :-** WRIT - A No. - 1750 of 2022

Petitioner :- Head Constable Prahlad Singh And Another

Respondent :- The State Of U.P. And 2 Others

Counsel for Petitioner :- Bramh Narayan Singh

Counsel for Respondent :- C.S.C.

Connected with

2. **Case :-** WRIT - A No. - 10661 of 2024

Petitioner :- Dhiri Singh

Respondent :- State Of Up And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

3. **Case :-** WRIT - A No. - 10826 of 2023

Petitioner :- Siyaram

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

4. **Case :-** WRIT - A No. - 1115 of 2023

Petitioner :- Devendra Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Munesh Kumar,Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

5. **Case :-** WRIT - A No. - 11823 of 2020

Petitioner :- Jamwant Singh

Respondent :- The State Of U.P. And 6 Others

Counsel for Petitioner :- Atipriya Gautam,Ramesh Chandra
Tiwari,Vijay Gautam(Senior Adv.)

Counsel for Respondent :- C.S.C.

with

6. **Case :-** WRIT - A No. - 11827 of 2020

Petitioner :- Kushan Pal Singh

Respondent :- The State Of U.P. And 5 Others

Counsel for Petitioner :- Atipriya Gautam,Ramesh Chandra

Tiwari,Vijay Gautam(Senior Adv.)

Counsel for Respondent :- C.S.C.

with

7. Case :- WRIT - A No. - 11970 of 2022

Petitioner :- Brajesh Kumar Dubey

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Arun Kumar Singh,Satya Prakash Pandey

Counsel for Respondent :- C.S.C.

with

8. Case :- WRIT - A No. - 12108 of 2020

Petitioner :- Nem Singh

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Atipriya Gautam,Vijay Gautam(Senior Adv.)

Counsel for Respondent :- C.S.C.

with

9. Case :- WRIT - A No. - 12133 of 2020

Petitioner :- Nem Singh

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Atipriya Gautam,Vijay Gautam(Senior Adv.)

Counsel for Respondent :- C.S.C.

with

10. Case :- WRIT - A No. - 1329 of 2021

Petitioner :- Hari Shankar Yadav

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Kailash Prakash Pandey

Counsel for Respondent :- C.S.C.

with

11. Case :- WRIT - A No. - 15169 of 2022

Petitioner :- Radhey Shyam

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

12. Case :- WRIT - A No. - 1699 of 2023

Petitioner :- Amir Pal Singh

Respondent :- State Of U P And 6 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

13. Case :- WRIT - A No. - 17710 of 2022

Petitioner :- Onkar Nath

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

14. Case :- WRIT - A No. - 17719 of 2023

Petitioner :- Kishanpal Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

15. Case :- WRIT - A No. - 19048 of 2021

Petitioner :- Satya Prakash Yadav

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Kailash Prakash Pandey,Narendra Singh

Counsel for Respondent :- C.S.C.

with

16. Case :- WRIT - A No. - 2019 of 2024

Petitioner :- Sheo Raj Singh

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Gulab Chandra,Rupesh Kumar Singh

Counsel for Respondent :- C.S.C.

with

17. Case :- WRIT - A No. - 21419 of 2022

Petitioner :- Haripal Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

18. Case :- WRIT - A No. - 249 of 2020

Petitioner :- Daya Shankar Tripathi

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Anil Babu

Counsel for Respondent :- C.S.C.

with

19. Case :- WRIT - A No. - 2527 of 2024

Petitioner :- Ajay Kumar

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Gulab Chandra,Rupesh Kumar Singh

Counsel for Respondent :- C.S.C.

with

20. Case :- WRIT - A No. - 2722 of 2023

Petitioner :- Makkhan Lal

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Nagesh Kumar

Counsel for Respondent :- C.S.C.

with

21. Case :- WRIT - A No. - 3034 of 2021

Petitioner :- Ravindra Nath Vishwakarma

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Atipriya Gautam,Vijay Gautam(Senior Adv.),Vinod Kumar Mishra

Counsel for Respondent :- C.S.C.

with

22. Case :- WRIT - A No. - 3192 of 2021

Petitioner :- Vinod Kumar Chaubey And 2 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Dinesh Kumar Rai

Counsel for Respondent :- C.S.C.

with

23. Case :- WRIT - A No. - 3723 of 2022

Petitioner :- Sub- Inspector Om Prakash

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Archana Tiwari,Bhuvaneshwar Singh,Bramh Narayan Singh,Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

24. Case :- WRIT - A No. - 4493 of 2023

Petitioner :- Jairam Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

25. Case :- WRIT - A No. - 5313 of 2021

Petitioner :- Indra Pal Singh

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Atipriya Gautam, Ishir Sripat, Vijay Gautam (Senior Adv.)

Counsel for Respondent :- C.S.C.

with

26. Case :- WRIT - A No. - 63 of 2024

Petitioner :- Umaji Sharan

Respondent :- State of U.P.

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

27. Case :- WRIT - A No. - 6330 of 2022

Petitioner :- Ram Naresh

Respondent :- The State Of Up And 2 Others

Counsel for Petitioner :- Bramh Narayan Singh

Counsel for Respondent :- C.S.C.

with

28. Case :- WRIT - A No. - 6828 of 2021

Petitioner :- Geeta Devi

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Kailash Prakash Pandey

Counsel for Respondent :- C.S.C.

with

29. Case :- WRIT - A No. - 8332 of 2021

Petitioner :- Ranveer Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Jitendra Kumar Srivastava, Ramesh

Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

30. Case :- WRIT - A No. - 8541 of 2021

Petitioner :- Mahendra Pal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Jitendra Kumar Srivastava,Ramesh
Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

31. Case :- WRIT - A No. - 9221 of 2024

Petitioner :- Jamuna Das

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Babita Upadhyay,Sanjeev Kumar Gaur

Counsel for Respondent :- C.S.C.

with

32. Case :- WRIT - A No. - 9405 of 2024

Petitioner :- Lal Singh

Respondent :- State Of Up And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

33. Case :- WRIT - A No. - 9497 of 2023

Petitioner :- Om Veer Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Archana Singh,Bramh Narayan
Singh,Dharmendra Kumar Rajput

Counsel for Respondent :- C.S.C.

with

34. Case :- WRIT - A No. - 9826 of 2023

Petitioner :- Ravendra Pal

Respondent :- The State Of Up And 2 Others

Counsel for Petitioner :- Archana Singh,Bramh Narayan Singh

Counsel for Respondent :- C.S.C.

with

35. Case :- WRIT - A No. - 9875 of 2023

Petitioner :- Devendra Pal Singh

Respondent :- The State Of U.P. And 2 Others

Counsel for Petitioner :- Archana Singh, Bramh Narayan Singh

Counsel for Respondent :- C.S.C.

with

36. Case :- WRIT - A No. - 19190 of 2024

Petitioner :- Suresh Kumar

Respondent :- State Of Up And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

37. Case :- WRIT - A No. - 20170 of 2023

Petitioner :- Subhash Kumar Chauhan

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Munesh Kumar, Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

38. Case :- WRIT - A No. - 21051 of 2023

Petitioner :- Prem Prakash Kaushik

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Munesh Kumar, Ramesh Chandra Tiwari

Counsel for Respondent :- CSC

with

39. Case :- WRIT - A No. - 8926 of 2023

Petitioner :- Krishna Pal Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Munesh Kumar, Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

40. Case :- WRIT - A No. - 510 of 2023

Petitioner :- Ganga Prasad Tiwari

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sheo Kinkar Singh, Suryaprakash Sharma

Counsel for Respondent :- C.S.C.

with

41. Case :- WRIT - A No. - 21684 of 2022

Petitioner :- Uday Ram

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ramesh Chandra Tiwari

Counsel for Respondent :- C.S.C.

with

42. Case :- WRIT - A No. - 16965 of 2021

Petitioner :- Mohammad Sagir Khan

Respondent :- The State Of U.P. And 7 Others

Counsel for Petitioner :- Atipriya Gautam,Devesh Mishra,Ishir
Sripat,Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. This bunch of petitions arises out of order of recovery proceedings initiated by the respondents for alleged wrongful pay fixation for which it was claimed that petitioners got paid excess amount of salary. Since all the petitions except for reference to amount and order impugned raise same controversy on facts, the entire bunch is disposed of by means of this common judgment and order. For the purposes of facts and legal principles reference is made to the pleadings raised in Writ – A No.- 1750 of 2022, which is a leading petition.

2. Learned counsel for the petitioners have argued that petitioners were not at all responsible for any particular pay fixation which is alleged by the respondents to have been wrongly done and has resulted in excess payment of salary to the petitioners. Pleadings to this effect has been taken in paragraph 14 of the writ petition. Identical stand has been taken by several other petitioners whose petitions have been tagged with this bunch.

3. Besides above it is argued that even if the correction was to be carried out and it was determined that petitioners had been paid

excess salary, then no recovery could have been made from him, he being not responsible for the same. Thus, learned counsel for the petitioners have argued that neither on principle of *suppressio veri*, nor on the principle of *suggestio falsi* petitioners in any manner can be held responsible for alleged wrongful pay fixation.

4. Learned counsel for the petitioners have also relied upon the judgment of Supreme Court in the case of **State of Punjab and others v. Rafiq Masih (White Washer) (2015) 4 SCC 334** as well as another judgment of Supreme Court in the case of **Thomas Daniel v. State of Kerala and others, AIR 2022 SC 2153**. Paragraph 12 of the judgment of Rafiq Masih (*supra*) is reproduced hereunder:

"12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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."

5. Paragraphs 9, 10, 11 and 12 of the judgment of Thomas Daniel (*supra*) is also reproduced hereunder:

"9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

10. In Sahib Ram v. State of Haryana 1995 1995 Supp (1) SCC 18 this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees. It was held thus:

"5. 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 the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

11. In Col. B.J. Akkara (Retd.) v. Government of India (2006 11 SCC 709 this Court considered an identical question as under:

"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted

relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as

pensioners have been put on notice in regard to the wrong calculations earlier made."

12. In Syed Abdul Qadir v. State of Bihar (2009) 3 SCC 475 excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

6. A counter affidavit has been filed in the matter by the respondents and in reply to paragraph 14 only this much has been stated that the re-fixation was done as per the Government order dated 8th December, 2008, 4th May, 2010 and 12th February, 2015 and after carrying out audit by the audit team recovery of

Rs.1,17,401/- has been assessed which has been directed to be recovered in easy installments.

7. Similar stand has been taken by the State respondents in all other matters connected to this bunch.

8. Thus, it is not denied that petitioners were not responsible in any manner for alleged wrongful pay fixation and so the judgment of **High Court of Punjab and Haryana & others v. Jagdev Singh 2016 (14) SCC 267** will not be applicable, in which it was held that *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.*

9. One more stand has been taken by learned Standing Counsel that since the petitioners have given undertaking at the time of retirement that if any excess amount is paid they would refunding the same.

10. In my considered view, this would not apply to attract the judgment of Supreme Court in the case of Jagdev Singh (*supra*). What has been held in the case of Jagdev Singh (*supra*) and what has been genuine also that undertaking should have furnished by employee at the time of pay-fixation. This is not a case in hand. Any employee if has furnished any undertaking at the time of retirement that he would be refunding the excess amount, this undertaking is to be taken only in respect of any wrongful computation of pension amount as per the last pay drawn and also the computation amount and calculation of other post retirement dues.

11. Such an undertaking cannot be read to mean that employee intended an exercise of re-fixation to be undertaken against him from a back date and that too without notice to him and to further invite resultant recovery due to assessment of excess salary on account of such alleged wrongful pay-fixation.

12. Thus any declaration at the time of retirement would not amount to a declaration within the meaning of the judgment of Supreme Court in the case of Jagdev Singh (*supra*).

13. It is further observed that any option if exercised on a printed format by an employee while exercising the option, and if he did not make particularly any misrepresentation by moving a separate application, such an exercise of option was if approved by the authority, then it is the approving authority who is to be blamed for such pay fixation. Besides this if option is exercised much before the age of superannuation and the error is not detected for the fault of the authority for a considerably long period of time, then the beneficiary cannot be blamed and under the Government order dated 16th January, 2007, no re-fixation can be directed beyond a period of 34 months back from the date of retirement. This Government order has further been interpreted in the judgment of this Court in the case of **Sushil Kumar Singhal v. Pramukh Sachiv Irrigation Department and others, 2014 (16) SCC 444**, in which vide paragraph 11 the Supreme Court has held thus:

"11. The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant."

14. In view of the above, therefore, the action by the respondents based upon any declaration made by the employee at the time of re-fixation by choosing an option, would not give any license or certificate to the respondents to rectify the error in pay fixation at the time of retirement and to pass order for consequential recovery.

15. Now, looking to the judgment in the case of Rafiq Masih (*supra*) where such recovery has been held to be absolutely barred from the retiral dues of the Class III and Class IV employees (Group- C and Group -D category), the orders impugned in writ petitions are held unsustainable.

16. In view of the above, the impugned order of recovery dated 25th September, 2017 is hereby quashed. The writ petition is allowed. Similar orders passed in other connected matters are also quashed.

17. Since ignorance of law is no excuse and once the Supreme Court has given judgment in the case of Rafiq Masih (*supra*) followed in the case of Thomus Denial (*supra*), the State respondents cannot justify the action of recovery and hence the petitioners are entitled for refund of money along with interest which is assessed to be 8%.

18. Let the entire amount recovered from the petitioners pursuant to the order impugned dated 25th November, 2017 along with interest at the rate of 8% be refunded to them within a maximum period of two months from the date of production of certified copy of this order.

Order Date :- 17.3.2025

Atmesh