

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

LPA No. 518 of 2026

Date of decision: 07.09.2026

State of H. P. & Ors. ...Appellants.

Versus

Kirpa Ram ...Respondents

Coram

The Hon'ble Mr. Justice G. S. Sandhawalia, Chief Justice.

The Hon'ble Mr. Justice Bipin C. Negi, Judge.

Whether approved for reporting?

For the Appellants: Mr. Pranay Pratap Singh, Additional Advocate General.

G. S. Sandhawalia, Chief Justice (Oral)

CMP(M) No. 153 of 2026

For the reasons stated in the application, which is duly supported by the affidavit of the Superintending Engineer, 7th Circle, HPPWD Dalhousie, H.P., the delay of 172 days in filing the appeal is condoned. Application stands disposed of.

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2. The State is aggrieved by the innocuous order passed by the learned Single Judge in ***CWP No. 6468 of 2024***, titled as ***Kirpa Ram vs. State of H. P. & Ors.***, on 01.05.2026, whereby the recovery had been quashed and the State was directed to release the recovered amount of Rs.35,000/- within four weeks from the date of the judgment, failing which the

amount would carry interest @5% per annum from the date of filing the petition.

3. The learned Single Judge had noticed that the petitioner was a Class-III employee and only one month was left for superannuation and, therefore, did not permit the State to recover the alleged over-payment from the petitioner at the fag end of his service career.

4. It was also noticed by the learned Single Judge that excess payments had been made w.e.f. 27.08.2009 to 31.12.2015 and thereafter also w.e.f. 01.01.2016 to 31.12.2021. The interim order had also been passed in the writ petition to the effect that further recovery could not be effected.

5. Reliance was naturally placed upon the celebrated judgment of the Apex Court in ***State of Punjab & Ors. vs. Rafiq Masih (White Washer & Ors., (2015) 4 SCC 334*** to hold that payments made in excess of the entitlement would not be permissible to be recovered, especially if that had been made for a long period of time. It was noticed that the benefits were granted on notional basis w.e.f. 27.08.2009 and on actual basis w.e.f. 09.08.2012. Apparently for a period of 12 years, the actual benefits had been accrued and paid to the petitioner and, thus, no fault can be as such attributed to the learned Single Judge in granting the relief while placing reliance upon the judgments of the Apex Court in ***Chandi Prasad Uniyal & Ors. vs. State of***

Uttrakhand & Ors. (2012) 8 SCC 417 and in **SLP (C) No(s). 5918/2024, titled as Jogeswar Sahoo & Ors. vs. The District Judge, Cuttack & Ors.**, decided on 04.04.2024. The findings were recorded that it was not a petitioner's fault or misrepresentation, that the benefit of higher pay scale had been granted.

6. The principles laid down in **Rafiq Masih's** case supra read as under:-

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to 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.

7. Learned counsel for the State has vehemently submitted that the order would have the effect as such of re-fixation, on which no finding has been recorded.

8. We are not convinced with the said argument, as a specific prayer has been made in the writ petition not to reduce the pay of the petitioner in the interest of justice and fair play. The learned Single Judge has not granted any such benefit and, therefore, in principle, only saved the recovery aspect and calculation of the amount as such to be recovered. It is not the case where the petitioner as such was in-charge of fixing of his own pay and the benefits have been granted at higher level. The petitioner continuously received the excess pay for a period of 12 years.

9. In such circumstances, the action of the State in ordering recovery without even issuing notice as such, for re-fixation would be violative of the principle of natural justice. The learned Single Judge has granted the relief to the petitioner as he was at the fag end of his service career having been appointed way back in the year 1991 and granted work-charge status on 01.01.2000 as Mason Gr.II.

10. It is settled principle that if anybody is to be visited with civil consequences, least the State would issue a show cause notice. Before the petitioner could approach the Court an amount of Rs. 35,000/- had already been recovered from him and it is only by the virtue of interim order that the balance recovery was stayed.

11. In such circumstances, no fault can be found in the well reasoned order passed by the learned Single Judge, which is based on the settled principle of law. Resultantly, the appeal is dismissed, so also the pending applications, if any.

(G. S. Sandhawalia)
Chief Justice

(Bipin C. Negi)
Judge

7th September, 2026
(sanjeev)