**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 13133 of 2008
DATE OF DECISION :- August 13, 2015**

**Union of India and others ...Petitioners**

**Versus**

**MES No. 367521 Sukhdev Singh and another ...Respondents**

**CWP No. 13139 of 2008**

**Union of India and others
...Petitioners**

**Versus**

**MES No. 369066 Sukhwinder Pal Singh and another
...Respondents**

**CWP No. 13143 of 2008**

**Union of India and others
...Petitioners**

**Versus**

**MES No. 374448 Karamjit Singh and another
...Respondents**

**CORAM: HON'BLE MR.JUSTICE M.JEYAPAUL**

**HON'BLE MR. JUSTICE DARSHAN SINGH**

**Present**:- Mr. Rajiv Sharma, Advocate for the petitioner in CWP No. 13133 of 2008, CWP No. 13139 of 2008 and CWP No. 13143 of 2008.

Mr. Jagdeep Jaswal, Advocate for the respondents in CWP No. 13139 of 2008.

Mr. J.R. Sayal, Advocate for the respondents in CWP No. 13143 of 2008.

***

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

**M.JEYAPAUL, J.**

1. Aggrieved by the direction issued to the Writ Petitioners not to make any recovery of the amount already paid to the 1$^{st}$ respondent in the writ petitions, consequent upon financial up-gradation in the pay package made to them, these three Writ Petitions have been filed.

2. 1$^{st}$ respondent in each of the Writ Petitions in fact challenged the order of cancellation of financial up-gradation passed by the Writ Petitioner on 24.11.2006 consequent upon finalization of Review DPC and as a corollary, the 1$^{st}$ respondent also has sought a restraint order not to make recovery of the excess amount paid in view of the financial up-gradation in the pay package of the 1$^{st}$ respondent.

3. The learned Central Administrative Tribunal upheld the impugned order dated 24.11.2006 passed by the Writ Petitioners consequent upon financialisation of Review of DPC but the learned Central Administrative Tribunal referring to the decision of the Hon'ble Supreme Court in ***Shyam Babu Verma and others versus Union of India and others 1994 (2) SLJ 99 (SC) and Union of India versus K.B. Khare and***

***others 1994 Supp (3) SCC 502*** held that inasmuch as there was no misrepresentation of facts on the part of the 1st respondent herein while extending the benefit of financial up-gradation, the question of making recovery of the amount from the 1st respondent does not arise.

4. The Writ Petitioners have challenged only the later part of the order of Central Administrative Tribunal directing them not to recover the excess amount paid on account of financial up-gradation in the pay package of the 1st respondent.

5. The learned counsel appearing for the petitioners vehemently submitted in the background of the decision in ***Chandi Prasad Uniyal and Others versus State of Uttarakhand and others (2012) 8 Supreme Court Cases 417*** that any amount paid in excess without the authority of law can always be recovered, of course, barring few exceptions of extreme hardships. Non recovery of the amount paid in excess would amount to unjust enrichment, the learned counsel appearing for the petitioners pleaded.

6. Learned counsel appearing for 1st respondent in the Writ Petitions would resist the above submissions made by learned counsel appearing for the petitioners referring to the latest judgment pronounced by the Hon'ble Supreme Court in ***State of Punjab and Others versus Rafiq Masih (White Washer) and Others (2015) 4 Supreme court Cases 334*** wherein it has been held that recovery from the employees belonging to Group 'C' or Group 'D' services (Class III and Class IV service) is completely barred inasmuch as recovery from such employees would definitely lead to undue hardship. It is also submitted by learned counsel

appearing for Sukhdev Singh and Karamjit Singh that they have already retired from service and the other 1st respondent Sukhwinder Pal Singh is due to retire on 31.01.2019. Therefore, the question of recovery from such employees does not arise in the background of the above decision, it is further submitted

7. In ***Chandi Parsad Uniyal and Others versus State of Uttarakhand and others (2012) 8 Supreme Court Cases 417****,* it has been held as follows :-

> “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."

8. The Hon'ble Supreme Court having thoroughly analyzed the impact of the non recovery from the employees who received excess amount from the employer, observed that it is tax payers money which has been paid to the employee and, therefore, the question of non recovery does not arise.

9. In the same decision, the Hon'ble Supreme court has given some margin in respect of employees who have retired from service or are on the verge of retirement. In the latest decision in ***State of Punjab and Others versus Rafiq Masih (White Washer) and Others (2015) 4 Supreme court Cases 334***, the Hon'ble Supreme court held as follows:-

> "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 the employees belonging to Class III and Class IV service (or Group C and Group D service).
>
> (ii)Recovery from the retired employees, or the employees

who are due to retire within one year, of the order of recovery.

(iii)Recovery from the 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."

10. Even in the decision of Chandi Parsad Uniyal (supra), it has been held that in exceptional cases where extreme hardship would emerge on account of the recovery, the employer shall take a lenient view in the matter of recovery of the amount paid in excess. In the above decision in Rafiq Masih (supra), certain specific situations which would result in hardship on account of recovery of the amount have been enumerated. One such instance is the recovery sought to be effected from employees belonging to Group 'C' and Group 'D' service (Class III and Class IV Service). Another instance is recovery sought to be effected from the retired employees or the employees who are going to retire within one year. Under such special circumstances which would definitely cause

hardship to the employee, the Hon'ble Supreme Court in the above said latest decision has held that the employer shall not venture to recover the the excess payment made.

11. There is no dispute to the fact that the 1st respondent in CWP No. 13139 of 2008 is still serving as Class III employee while the 1st respondents in the other two Writ Petitions have retired from service as Class III employees. It is reported that the 1st respondent Sukhwinder Pal Singh in CWP No. 13139 of 2008 is due to retire on 31.01.2019.

12. In view of the above facts and circumstances, we are of the considered view that the petitioners are not entitled to recover the amount paid in excess on account of financial up-gradation from the 1st respondents in these Writ Petitions.

13. There is no merit in these Writ Petitions, therefore, they stand dismissed.

**(M. JEYAPAUL)**
**JUDGE**

**(DARSHAN SINGH)**
**JUDGE**

**August 13, 2015**
*p.singh*