

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

CWP-4575-2014

Date of decision : 05.05.2015

Kamlesh Jain

...Petitioner

V/S

Haryana Warehousing Corporation

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R. K. Malik, Sr. Advocate
with Mr. Tejpal Dhull, Advocate for the petitioner.

Mr. Ashwani Talwar, Advocate
with Ms. Sanamjeet Kaur, Advocate for respondent.

JITENDRA CHAUHAN, J. (Oral)

This Civil Writ Petition has been filed under Article 226/227 of the Constitution of India for quashing of the action of the respondent vide which the recovery of Rs.2,89,854.55 was effected from the petitioner, and for refunding the said amount along with interest.

Petitioner was appointed as Accounts Clerk on 28.04.1980. On attaining superannuation he retired on 30.06.2008. An amount of Rs.2,89,854.55 has been withheld by the respondents, on the ground that higher basic pay and allowances was wrongly granted to the petitioner. Feeling aggrieved, the petitioner along with other similarly situated employees had approached this Court vide CWP No.1024 of 1988, which was partly allowed on 20.12.2011, whereby the petition was dismissed so far as it relates to re-fixation of pay but allowed in part to the extent that the excess amount already paid on the basis of revised pay scales, shall not be

recovered. It is submitted that despite order passed by this Court the amount has not been released.

Learned counsel for the petitioner refers some judgment i.e. **State of Punjab vs. Rafiq Masih (White Washer) etc.** reported in 2015 All India Reporter (AIR) (Supreme Court) 696 and **Budh Ram and others Vs. State of Haryana and others** 2009(3) PLR 511.

Learned counsel for the respondents refers to undertaking made by the petitioner that she shall have no objection to the recovery of excess pay, if any, drawn by her due to grant of the benefit provisionally by Haryana Warehousing Corporation.

Heard.

It is admitted case of the parties that the petitioner never misrepresented or concealed any fact. The circumstances in which the undertaking, that the petitioner will have no objection to the recovery of the excess pay, was executed, have not come on record. The poor employee had no option except to succumb to the pressure of the establishment. In the circumstances, the undertaking, if any, deserves to be ignored. The action of the respondent is not tenable in view of the order passed in CWP No.1024 of 1988 and ratio of law laid down in Budh Ram's case (supra).

In view of above, the present petition is allowed and the respondent is directed to refund the amount Rs.2,89,584.55, within 4 months from the receipt of certified copy of this order.

05.05.2015

ashok

(JITENDRA CHAUHAN)
JUDGE