

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-17789 of 2013 (O&M)

Date of decision: 13.7.2016

**Manjit Singh**

**.....Petitioner**

**versus**

**State of Punjab and others**

**.....Respondents**

**CORAM: Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.Rai Singh Chauhan, Advocate for the petitioner  
Mr.Rajat Bansal, AAG Punjab

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

**Kuldip Singh, J. (Oral)**

Manjit Singh a retired Head Constable from Punjab Police seeks issuance of writ in the nature of certiorari quashing the order dated 22.1.2008 (Annexure P1) and order dated 9.7.2013 (Annexure P5), issued by the Senior Superintendent of Police, Bathinda, vide which a sum of Rs.1,15,475/- was ordered to be deducted from leave encashment of the petitioner.

The petitioner joined as a Constable in the Punjab police on 17.8.1970. He was promoted as Head Constable on 17.8.1988 and was granted 8 years' proficiency step-up as Head Constable w.e.f. 1.1.1996 and also granted special allowance of Rs.300/- w.e.f. 1.6.2001. The petitioner retired from service on 30.11.2007. After his retirement it came out that the pay of the petitioner was wrongly fixed in excess w.e.f. 1.1.1979 instead of 1.8.1980 with the admissible rate of annual increment. Therefore, the office

of the Accountant General (A&E), Punjab & UT, Chandigarh vide letter dated 6.9.2007 (Annexure R1) pointed out the said discrepancy and directed the department to send the revised pay scale. In pursuance to said letter, the office of the Senior Superintendent of Police re-fixed the salary with correct date of increment vide order dated 8.10.2007 (Annexure R2). Subsequently, the order dated 22.1.2008 (Annexure P1) was passed to effect the recovery of excess amount paid to the petitioner during service on account of wrong fixation of pay.

In the reply, the State has not denied the factual position and has stated that the pay was wrongly fixed. Therefore, the said error has been corrected.

I have heard learned counsel for the parties and have carefully gone through the file.

The question would arise as to whether after the retirement of the petitioner, the State could effect recovery of the arrears given to the petitioner on account of wrong fixation of pay way back in the year 1979? The matter is squarely covered by the authority of the Apex Court in *State of Punjab and others etc. Vs Rafiq Masih (White Washer) etc.* 2015 AIR (SC) 696, wherein after considering the said matter, the Apex Court laid down the following principles:-

*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.*

It being so, though the pay of the petitioner was wrongly fixed w.e.f. 1.1.1979 instead of 1.8.1980, the arrears, cannot be recovered after his retirement. Therefore, the impugned order dated 22.1.2008 (Annexure P1) so far it orders the recovery of the arrears is hereby quashed. So far as other orders Annexure R1 and R2 are concerned, vide which, the pay was recalculated and fixed, there is no error in the same. Therefore, at the time of grant of pension, the said clerical error could have been corrected. It being so, the petition is partly allowed, as indicated above. The amount already deducted by the respondents as arrears in pursuance to the order 22.1.2008 (Annexure P1), is ordered to be refunded to the petitioner within two months from the date of receipt of a certified copy of this order with interest @ 9% per annum.

13.07.2016  
gk

(Kuldip Singh)  
Judge