

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

1. CWP No. 9064 of 2015

Paramjit Kaur

...Petitioner

Versus

State of Punjab & Others

...Respondents

2. CWP No. 9065 of 2015

Gurvinder Singh

...Petitioner

Versus

State of Punjab & Others

...Respondents

3. CWP No. 12699 of 2015

Balwinder Kaur

...Petitioner

Versus

State of Punjab & Others

...Respondents

4. CWP No. 12709 of 2015

Bikram Singh

...Petitioner

Versus

State of Punjab & Others

...Respondents

5. CWP No. 15030 of 2016

Bhupinder Singh & Others

...Petitioners

Versus

State of Punjab & Others

...Respondents

Date of decision: 01.05.2017

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S. K. Rattan, Advocate for the petitioner(s).

Ms. Lavanya Paul, AAG, Punjab.

JAISHREE THAKUR, J. (Oral)

This common order shall dispose of above noted five writ petitions as the issues involved therein are identical. However, facts are being extracted from ***CWP No. 9064 of 2015***.

These writ petitions have been filed seeking to challenge the recovery order dated 28.04.2015 (Annexure P-5).

It is contended that by order dated 06.04.2015, the respondents refixed and reduced the pay of the petitioners. Initially the pay scale of the petitioners had been fixed in the pay scale of Rs. 1640-2925 w.e.f. 01.01.1986 and, thereafter, eventually they were given pay scale of Rs. 10300-34800+3600(grade pay) w.e.f. 01.01.2006 on the basis of a judgment rendered in ***CWP No. 16380 of 1989***, decided on 07.05.2009, titled as ***Balbir Singh and others vs. State of Punjab and others*** (Annexure P-1). A Letters Patent Appeal was preferred by the State of Punjab bearing ***LPA No. 270 of 2012*** titled as ***State of Punjab and others vs. Balbir Singh and others*** to set aside the pay scale that had been granted to the petitioners by quashing notification dated 17.02.1989. The aforesaid LPA was allowed and the order dated 07.05.2009 (Annexure P-1), passed by the learned Single Judge, was set aside. As a consequence, some of the petitioners filed ***SLP No. 39188 of 2012*** against the said LPA which was dismissed with a direction that 'any amount that has been paid to the petitioners would not be recovered.' Thereafter, the respondents on refixing the pay scale ordered recovery which has been impugned in the present writ petitions.

Learned counsel for the petitioner(s) relies upon a judgment

rendered in *State of Punjab vs. Rafiq Masih (White Washer) etc., (2014) 8 SCC 883* to contend that no recovery can be made from the petitioners.

Counsel for the respondents-State is not in a position to dispute the fact that recovery is sought on the basis of re-fixation of pay scale.

I have heard learned counsel for the parties and have perused the record of the cases. Hon'ble Supreme Court in *Rafiq Masih's case (supra)* held that:

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.

There was obviously no fraud or misrepresentation on the part of the petitioners in claiming any additional benefit. Therefore, the judgment, which has been relied upon, is wholly applicable to the present cases. Resultantly, the present writ petitions are allowed and the impugned order(s) are set aside.

May 01, 2017

Ansari

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No