

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

CWP No.10361 of 2018

Date of Decision : 27.04.2018

Bharat Sanchar Nigam Ltd. and others

....Petitioners

Versus

Kuldip Singh and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJBIR SEHRAWAT

Present: Ms.Deepali Puri, Advocate
for the petitioners.

MAHESH GROVER, J. (Oral)

This writ petition is directed against the order of the
Central Administrative Tribunal, Chandigarh dated 13.02.2017.

The respondent No.1-employee was admitted to certain
benefits on account of revision of pay which eventually were found to
have been paid in excess resulting in recovery proceedings from his
leave encashment. The Tribunal negated it on the ground of two
judgments of the Hon'ble Supreme Court, namely, *Chandi Prasad
Uniyal and ors. v. State of Uttarakhand and ors.* **2012 AIR SCW
4742** and *State of Punjab v. Rafeeq Masih* (**Civil Appeal
No.11527/2014**) decided on 18.12.2014.

Learned counsel for the petitioners now relies upon a
judgment of the Hon'ble Supreme Court reported as *High Court of
Punjab and Haryana & ors. v. Jagdev Singh*, **2016(7) JT 409** to
contend that judgment in **Rafeeq Masih's case** (supra) has been
distinguished by observing that if an undertaking has been given by

an employee while opting for the revised pay scales, he is bound by the same.

After hearing the learned counsel for the petitioners, we are of the opinion that the judgment relied upon by the learned counsel for the petitioners is distinguishable on facts. In **Chandi Prasad Uniyal's case**(supra) certain categories have been carved out and the relevant part of the judgment is extracted herebelow :-

“13. Later, a three-Judge Bench in Syed Abdul Qadir case (supra) after referring to Shyam Babu Verma, Col. B.J. Akkara (retd.) etc. restrained the department from recovery of excess amount paid, but held as follows:

“Undoubtedly, the excess amount that has been paid to the appellants

- teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are

on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.

(emphasis added)”

14. We may point out that in Syed Abdul Qadir case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. 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 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 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.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012.

The appeal stands dismissed with no order as to costs. IA Nos.2 and 3 are disposed of.”

The employee in the instant case was working as a Senior Technical Supervisor whereas whereas in the judgment relied upon by the learned counsel for the petitioners the incumbent mentioned belonged to the higher echelons. Besides, there was a statutory condition of an undertaking imposed which in the case in hand is not manifesting itself.

Consequently, we are of the opinion that the Tribunal has committed no error.

Petition dismissed.

(MAHESH GROVER)
JUDGE

27.04.2018
dss

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No