

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

1. **Date of decision-14.05.2019
CWP-11328-2015**

Gurmit Singh and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

2. **CWP-11096-2017**

Jatinder Pal Singh and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

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

Mr. Navdeep Chhabra, D.A.G., Punjab.

JITENDRA CHAUHAN, J.

This judgment shall dispose of the aforementioned two petitions as common questions of law and facts are involved therein. The facts are being taken from CWP-11328-2015, for the sake of brevity.

Learned counsel for the petitioners states that the petitioners were appointed and working as ETT teachers. Respondents issued instructions dated 03.11.2006 vide which proficiency step up after completion of 4/9/14 years of service was to be granted. In compliance of

the said instructions, petitioners were granted four years proficiency step up with effect from 01.11.2006 vide order dated 01.12.2007 as mentioned in the service book of the petitioners. Thereafter, respondents implemented the 5th Pay Commission report effective from 01.01.2006 which was issued vide notification dated 27.05.2009 by which pay of the petitioners had been revised and they were granted revised pay scale of Rs.9600+3000=12600/- w.e.f. 01.01.2006 (Annexure P-1). Petitioner(s) had been getting the pay as stated above continuously till 08.03.2015. However, vide order dated 09.03.2015 (Annexure P-4) respondents have reduced and re-fixed the pay and ordered to make the recovery from the petitioners, which is not sustainable in the eyes of law.

Learned counsel further submits that the petitioners had furnished reply to the impugned orders (Annexures P-3 to P-6) vide letter dated 04.04.2015 (Annexure P-7) stating therein that they were given the option and the pay had been fixed accordingly. It is further contended that the petitioners have been granted the said benefits as per rules/instructions applicable at the relevant time. The petitioners also served a legal notice dated 08.04.2013 (Annexure P-14) upon the respondents but in vain.

On the other hand, learned counsel for the respondents states that the pay of the petitioner(s) was wrongly fixed on 25.07.2012 w.e.f. 01.01.2006, on the basis of option submitted by the petitioners and that was rectified after following the due procedure on 23.09.2015.

It is further contended by learned State counsel that the petitioners are themselves given undertaking that in case it is found that the payment is made in excess, they shall be liable to refund the amount to the department. The petitioners are bound by their undertakings and now they

cannot be permitted to reiterate from the said undertaking.

Learned State Counsel submits that in the Civil Appeal 11527-2014 (supra) Hon'ble the Supreme Court has also summarised the following 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”.

Heard.

The only point for determination is whether the recovery of the amount paid on account of the revision of pay which subsequently was found to be wrongly granted could be recovered. The recovery cannot be made from the petitioners as they are the Class III employees and their case

is squarely covered by the judgment passed in '*State of Punjab and others Vs. Rafiq Masih etc.*' (*supra*).

So far as the undertakings given by the petitioners are concerned, this Court feels that the effect of benefit which has been given in *Rafiq Masih's* case to the petitioners, cannot be taken away by the undertaking given by the petitioners. Such an undertaking is bad and against the public policy.

Accordingly, the present petitions are allowed and the impugned orders dated 09.03.2015 (Annexures P-3 to P-6) to the extent of effecting recovery, are hereby *set aside*.

(JITENDRA CHAUHAN)
JUDGE

14.05.2019

ps-I

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No