

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

CWP No.13453 of 2015

Date of decision: 06.09.2019

Nashib Singh and Ors.

...Petitioners

Versus

State of Haryana and Ors.

... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Kamal Mor, Advocate for the petitioners.
 Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J. (Oral).,

[1] Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing order of recovery Annexure P/2 (collectively) dated 21.04.2015 passed by respondent No.3 against the petitioners as also for the issuance of a writ of Mandamus for directing the respondents not to recover the amount given to the petitioners on account of increment without any misrepresentation or fraud on their part.

[2] Learned counsel contends that the petitioners were granted benefit of increment of ₹ 410/- w.e.f. 01.07.2009 without any representation or request by them. However, vide Haryana Govt. letter No.6/126/2013-4 PR (FD) dated 07.01.2015 directions were issued for fixation of increment of employees who had joined Govt. service on or after 01.01.2006 to be granted proportionately w.e.f. 1st July of the same year (if they had joined between 1st January to 30th June) and w.e.f. 1st July of the next year (if they had joined between 1st July to 31st December).

[3] Learned counsel further contends that in terms of letter, Annexure P/1 dated 07.01.2015, respondent No.3 re fixed the salary of the petitioners and directed recovery of the excess amount out of the amount already given to the petitioners at any time/stage and despite the petitioners approaching respondent No.3 not to recover the amount already paid since there was no fraud or misrepresentation played by them, no relief had been granted. Learned counsel by placing reliance on paragraph No. 12 (i) of the decision of Hon'ble the Supreme Court in **State of Punjab and others etc vs Rafiq Masih (White Washer) etc., 2015 (1) RSJ 177** contends that no recovery can be made from the petitioners since they belong to Class III service.

[4] Per contra, learned Sr. DAG relies upon the decision of Hon'ble the Supreme Court in **High Court of Punjab and Haryana and Others vs Jagdev Singh, 2016 (3) RSJ 423** to contend that in said case recovery from a retired employee was permitted in view of the undertaking given by the employee while opting for and getting payment of arrears on account of revised pay scale to refund any excess payment made in case it was found that the employee was not entitled to any part thereof.

[5] I have considered the submission's of learned counsel. Hon'ble the Supreme Court in **Jagdev Singh's case (supra)** was pleased to hold that the principle enunciated in proposition 12 (ii) of its decision in **Rafiq Masih's case (Supra)** would not be applicable where recovery was in view of undertaking given by an employee to refund excess payment in case it was found that the employee was not entitled to the payment or part thereof. Relevant extract of **Jagdev Singh's case (Supra)** is reproduced as under:-

“9. The submission of the Respondent, which found favour with the High Court, was that a payment which

has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc 2015 (1) S.C.T. 195: 2015 (1) Recent Apex Judgments (R.A.J.) 104 : (2015) 4 SCC 334 this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied).

11. *The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”*

[6] Learned Sr. DAG by referring to preliminary submission No.7 of the written statement filed by respondent Nos.1 to 3 contends that when the pay of the petitioners was re-fixed according to the Haryana Civil Services (Revised Pay) Rules 2008, all the petitioners gave an undertaking that any payment that may be found to have been made as a result of incorrect fixation of pay, any excess payment detected in the light of discrepancies noticed subsequently would be refunded to the Government either by adjustment against future payment due to them or otherwise. Copy of the undertaking given by one of the petitioners is attached along with the reply as Annexure R/1 while relevant extract of the same is reproduced as under :-

“UNDERTAKING

I hereby undertake that any payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment that may be detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustments against future payments due to me or otherwise.

Date: 29.10.2009

Sd/-

Station: Katwal, Gohana

*Ashwani Kumar, J.B.T.
G.H.S. Katwal, Gohana
Sonipat”*

[7] In the light of the position as noted above, although there is protection to employees in terms of paragraph No.12 (i) of the decision in **Rafiq Masih's case (Supra)**, yet in view of the subsequent decision of Hon'ble the Supreme Court in **Jagdev Singh's case (Supra)** the petitioners are bound by the undertaking given to refund the payment received in excess of entitlement. However, keeping in view the fact that the petitioners are Class-III employees, it is directed that recovery from the petitioners be made in reasonable instalments spread over a period of two years.

[8] Writ petition dismissed with the aforementioned directions.

(B.S. Walia)
Judge

06.09.2019
amit

1. Whether speaking/reasoned: Yes/No.
2. Whether reportable : Yes/No.