

**Sr. No.212
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.21809 of 2013 (O&M)

Date of Decision: 10.05.2019

Mukand Lal

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.D.Bawa, Advocate,
for the petitioner.

Mr. Pawan Kumar Longia, Senior Panel Counsel,
for respondents No.1 to 3-UOI.

Mr. Mahesh Dheer, Advocate,
for respondent No.4.

ARUN MONGA, J.(ORAL)

Petitioner seeks issuance of a writ in the nature of certiorari to quash the order dated 05.09.2013 (Annexure P-7) whereby his pension was reduced and Bank Statement dated 23.09.2013 (Annexure P-10) whereby an amount of Rs.5,37,012/- has been shown as outstanding.

2. The short controversy herein is whether or not case of the petitioner is covered by Apex Court's judgment rendered in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015 (4) SCC 334***, as admittedly pension of petitioner, for no fault of his, was fixed in excess of his entitlement and on discovery of the said mistake. The impugned order was passed for recovery of excess amount paid for the period from January, 2006 to July,

2013.

3. At the outset, learned counsel for the respondents submit that while the proposition of law enunciated in **Rafiq Masih's case (supra)** is not in dispute but the said proposition was duly considered in a later judgment of Supreme Court of India in case titled as **High Court of Punjab and Haryana Vs. Jagdev Singh, 2016 (14) SCC 267**, wherein it has been held that in a case where an undertaking has been furnished by the employee while opting for retiral benefits/pension that in case an excess payment is made to him of which he is later found not to be entitled, in that case, the recovery can be effected. Relevant part of the judgment (wherein **Rafiq Masih's** judgment was also considered) is extracted hereinbelow:-

10. *"In State of Punjab and others 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 hardships 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.”

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.”

4. A perusal of the above leaves no manner of doubt that the impugned order has been passed, in accordance with law and there is no ground to interfere, in the present writ petition.

5. However, keeping in view the principles of justice and equity, the respondents are directed to make necessary calculations as per the petitioner's entitlement and recover the excess amount by adjusting the arrears of pension first, if any, payable to the petitioner, which the learned counsel for the petitioner contends, on account of recommendation of 6th Central Pay Commission and thereafter in equal monthly installments not

exceeding 40% of the pension.

6. Petition stands disposed of in above terms.

10.05.2019
vandana

(ARUN MONGA)
JUDGE

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