

**CWP-5103-2016**

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

**CWP-5103-2016**

**Date of Decision: 23.01.2019**

**K.C. Verma**

**... Petitioner**

**vs.**

**UHBVNL and Ors**

**.. Respondents**

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr.Pankaj Maini, Advocate for  
Mr. K.L.Dhingra, Advocate  
for the petitioner.

Mr. Pawan Kumar Longia, Advocate  
for the respondents.

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**HARSIMRAN SINGH SETHI, J**

In the present writ petition, the challenge is to the action of respondent in withholding a sum of Rs.1,94,803/- out of the leave encashment on the ground that the pay of the petitioner was wrongly fixed while giving him the benefit of step up of pay equivalent to his junior, i.e. reserved candidate category, who had earned promotion on the basis of reservation prior to the date when the petitioner was granted promotion.

The facts as narrated in the present writ petition are that the petitioner joined as a Lower Division Clerk (LDC) with the respondent/Department on 16.09.1982. Thereafter, he was promoted as Upper Division Clerk (UDC) on 10.01.1990. One Sh. Ujjagar Singh was appointed as a LDC on 04.09.1985. He was promoted as UDC on 16.08.1993. The petitioner was senior to the said Sh. Ujjagar Singh in the cadre of LDC as well UDC. As Sh. Ujjagar Singh, belongs to the reserve category, he was promoted as Commercial Assistant on 17.04.2002 by granting him the benefit of

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reservation. The petitioner was promoted as Commercial Assistant on 01.02.2006. Before the petitioner could be promoted as Commercial Assistant, the said Sh. Ujjagar Singh, got promotion as Circle Assistant on 11.11.2005. The petitioner was promoted as a Circle Assistant after him on 27.11.2007. Thereafter, said Sh. Ujjagar Singh got promotion as a Head Clerk on 28.12.2006 whereas the same was granted to the petitioner on 22.12.2008. Sh. Ujjagar Singh was promoted as a Superintendent on 12.12.2008 whereas the petitioner caught him in the cadre of Superintendent on 25.08.2010. The petitioner retired from service on 29.02.2016 while working as a Superintendent. A chart showing the above position is as under:-

| <i><b>KC Verma</b></i> |            | <i><b>Ujjagar Singh</b></i> |            |
|------------------------|------------|-----------------------------|------------|
| LDC                    | 16.09.1982 | LDC                         | 04.09.1985 |
| UDC                    | 10.01.1990 | UDC                         | 16.08.1993 |
| Commercial Assistant   | 01.02.2006 | Commercial Assistant        | 17.04.2002 |
| Circle Assistant       | 27.11.2007 | Circle Assistant            | 11.11.2005 |
| Head Clerk             | 22.12.2008 | Head Clerk                  | 28.12.2006 |
| Superintendent         | 25.08.2010 | Superintendent              | 12.12.2008 |

State of Haryana had issued instructions to step up the pay of senior general category candidates w.e.f. the date the reserve category candidates were granted promotion in the cadre in which the general category candidates had caught the reserve category candidates, who was otherwise junior. In the present case, the petitioner caught Sh. Ujjagar Singh, Superintendent in the cadre of Superintendent on 25.08.2010.

On the basis of the said instructions, the petitioner filed a CWP No. 8682 of 2012 seeking the step up of his pay equivalent to Sh. Ujjagar Singh. The said writ petition was disposed by this Court on 09.04.2014. The

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said writ petition was disposed of in the terms of CWP No. 5956-2008 decided on 18.11.2008, according to which, the pay of the general category candidates was to be stepped up equivalent to that of the junior reserve category candidates.

Keeping in view the decision rendered by this Court in CWP-8682-2012, the pay of the petitioner was fixed equivalent to Sh. Ujjagar Singh, vide order dated 16.07.2014 and the petitioner was given the benefit of step up in each cadre i.e. in the cadre of Commercial Assistant, Circle Assistant, Head Clerk and Superintendent.

Before the petitioner superannuated on 29.02.2016, a show cause notice was issued to the petitioner on 03.02.2016, in which, it was mentioned that the pay of the petitioner has wrongly been fixed up by misinterpreting the instructions by giving him the benefit of step up in each of the cadre rather than giving the step up only in the last cadre where the petitioner had caught Sh. Ujjagar Singh and, therefore, his pay needs to be re-fixed and on re-fixation, recovery of Rs.1,94,803/- becomes due against him. As the petitioner did not file any reply, another notice was issued to the petitioner to submit reply. This notice was given on 25.02.2016 i.e. just four days before the retirement of the petitioner.

It is an admitted case that the petitioner did not file any reply to the said notices by which, the pay of the petitioner was re-fixed and on re-fixation, recovery of Rs.1,94,803/- was being effected.

After the retirement of the petitioner on 29.02.2016, while making the payment of the retiral benefits, the amount of recovery of Rs.1,94,803/- has been deducted from the leave encashment of the petitioner. This action is under challenge in the present writ petition.

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At the very outset, learned counsel for the petitioner states that the petitioner restricts his claim in respect of the recovery only and not with regard to the re-fixation of his pay as done by the respondent(s) while calculating the recovery.

Learned counsel for the petitioner states that the pay of the petitioner was re-fixed by the respondents themselves keeping in view the order passed by this Court in his earlier writ petition being CWP-8682-2012. The fixation was done by the respondents at their own level without there being any input from the petitioner as to how, the said order was to be implemented. It is the respondents, who own their own, granted the benefit to the petitioner after re-fixation of his salary by stepping up the same equivalent to that of Sh. Ujjagar Singh in each cadre. Once, the petitioner has no role to play, no responsibility of wrong fixation can be attributed to the petitioner. Once, the wrong fixation was done by the respondents on their own, keeping in view the settled principle of law, settled by Hon'ble Supreme Court of India in *State of Punjab and others vs. Rafiq Masih (White Washer), 2015 (4) SCC, 334*, no recovery can be done from the employee who is nearing the retirement or has already retired.

In the present case, though, the show cause notices were given to the petitioner on the proposed recovery a week before the retirement, but no order has been placed on record by the respondents that the order of recovery was passed during the service career of the petitioner. It can be safely presumed that the order of recovery, if any, was passed after the retirement of the petitioner i.e. 29.02.2016.

As per the settled principle of law, no recovery can be made from a retired employee. The judgment of the Hon'ble Supreme Court of India

rendered in ***Rafiq Masih (White Washer)'case*** (supra) is very clear. The case of the petitioner is covered under Clause-II of the said judgment. The relevant paragraph of the said judgment is as under:-

*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.”*

Counsel for the respondents is not able to rebut the said arguments that there was no role which was played by the petitioner in the re-

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fixation of his salary in pursuance to the direction given by this Court in CWP-8682-2012, decided on 09.04.2014. Under these circumstances, any incorrect calculation done by the respondents themselves, cannot be attributed to the petitioner and the said mistake is on the part of the department itself, therefore, the petitioner cannot be made liable for the said fixation and the recovery on account of wrong fixation, cannot cause prejudice to the petitioner.

Further, the respondents themselves issued instructions on 23.02.2016, before the recovery order could be passed in the case of the petitioner. As per the said instructions, no recovery can be done from the retired employee or an employee who is going to be retired within a period of one year. The relevant portion of that instructions dated 23.02.2016 is as under:-

*"I am directed to invite your attention to the Finance Department's instruction issued vide U.O. No.1/23/2010-2PR(FD) dated 06.02.2013 on the subject noted above and to say that the issue of recovery of excess amount from Government employee was considered by the State Government keeping in view the judgment of the Hon'ble Supreme Court of India in case of Col.B.J.Akkara (Retd.) V/s Govt. of India and others [(2006)] 11 SCC 709] and Syed Abdul Qadir and others Vs. State of Bihar & others [(2009)] 3 SCC 475].*

*Now, in the Civil Appeal No. 11527 of 2014 State of Punjab and others etc Vs. Rafiq Masih (White Washer) etc., Hon'ble Supreme Court of India had decided that the recovery of excess amount cannot be made in the following cases:-*

*(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.”*

*All the Administrative Secretaries and Head of Departments are requested to take final decision on each case of their department keeping in view the observation of Hon'ble Supreme Court of India. All the court cases pertaining to their department which are still pending for adjudication before the Hon'ble Court may be contested on the basis of these observation.*

*Copy of this letter is also available on website [www.finhry.gov.in](http://www.finhry.gov.in) which can be downloaded from there.*

Therefore, the recovery which has been made from the petitioner's pensionary benefits is contrary to the instructions as well which were in existence on the day when the respondents decided to recovery the amount of Rs. 1,94,803/- from the petitioner.

Keeping in view the above, recovery which has been done by the respondents is contrary to the law as well as the instructions issued by the respondents themselves and the same is set aside. The respondents are directed

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to refund the amount of Rs.1,94,803/- to the petitioner within a period of two months from the date of receipt of certified copy of this order.

The present writ petition stands allowed in abovesaid terms.

**23.01.2019**  
smriti

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No