

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

(1)

CWP No. 5459 of 2018

Date of Decision : 06.02.2019

Gurdial Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(2)

CWP No. 5385 of 2018

Dev Raj Mal

...Petitioner

Versus

State of Punjab and others

...Respondents

(3)

CWP No. 5428 of 2018

Ramesh Singh Salaria

...Petitioner

Versus

State of Punjab and others

...Respondents

(4)

CWP No. 5472 of 2018

Manjit Singh Bhatia

...Petitioner

Versus

State of Punjab and others

...Respondents

(5)

CWP No. 5463 of 2018

Harpal Singh Walia

...Petitioner

Versus

State of Punjab and others

...Respondents

(6)

CWP No. 5441 of 2018

Manmohan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ranjivan Singh, Advocate for the petitioner(s).

Ms. Deepali Puri Sandhu, Addl. A.G., Punjab
for respondent No. 1.

Mr. Harit Sharma, Advocate and
Ms. Shivani Sharma, Advocate for the respondents-PUDA.

Harsimran Singh Sethi, J.(Oral)

This order shall dispose of CWP Nos. 5459 of 2018, 5385 of 2018, 5428 of 2018, 5472 of 2018, 5463 of 2018 and 5441 of 2018.

All the writ petitions are being disposed of by the common order for the reason that the same question of law arises in all the above mentioned writ petitions i.e. whether the recovery could have been effected from the petitioner(s) on account of the re-fixation of their pay in view of the settled principle of law as settled by Hon'ble the Supreme Court in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc.,***

Before reverting to the question of law, the facts in respect of each writ petition as to when the benefit of ACP was granted and the impugned order of recovery was passed and the date of retirement of the petitioner(s) in each writ petition is given in the chart, which is as under:-

<i>Petition No.</i>	<i>24 years ACP benefit granted</i>	<i>Date of the order by which benefit of ACP was withdrawn</i>	<i>Date on which order of recovery of excess amount passed</i>	<i>Date of Retirement</i>	<i>Excess amount recovered and the year in which the same was recovered</i>
CWP No. 5385 of 2018 Dev Raj Mal Vs. State of Punjab and others	w.e.f. 27.06.2004 vide office order dated 20.09.2004 (Annexure P-2)	20.12.2010	22.03.2013 (Annexure P-6) 15.04.2013 (Annexure P-7)	30.12.2017	₹61,742/- Year, 2013
CWP No. 5428 of 2018 Ramesh Singh Salaria Vs. State of Punjab and others	w.e.f. 11.2.2004 vide O/o dated 29.08.2004 (Annexure P-2)	20.12.2010	25.3.2013 (Annexure P-5) 14.5.2013 (Annexure P-6)	31.12.2012	₹61,191/- Year, 2013
CWP No. 5441 of 2018 Man Mohan Singh Vs. State of Punjab and others	w.e.f. 11.2.2004 vide O/o dated 3.9.2004 (Annexure P-2)	20.12.2010	22.3.2013 (Annexure P-4) 3.4.2013 (Annexure P-5) 29.8.2013 (Annexure P-6)	31.5.2015	₹60,783/- Year, 2013
CWP No. 5459 of 2018 Gurdial Singh Vs. State of Punjab and others	w.e.f. 13.3.2004 vide O/o dated 17.08.2004 (Annexure P-2)	20.12.2010	24.5.2012 (Annexure P-6) 11.6.2012 (Annexure P-7)	30.4.2012	₹63,664/- Year, 2012
CWP No. 5463 of 2018 Harpal Singh Walia Vs. State of Punjab and others	w.e.f. 1.7.2004 vide O/o dated 28.11.2004 (Annexure P-2)	20.12.2010	22.3.2013 (Annexure P-6)	30.9.2017	₹61,667/- Year, 2013

CWP No. 5472 of 2018 Manjit Singh Bhatia Vs. State of Punjab and others	w.e.f. 22.8.2003 vide O/o dated 11.6.2004	20.12.2010	22.3.2013 (Annexure P-5)	31.1.2014	₹73,843/- Year, 2013
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For the sake of convenience, the facts are being taken from CWP No. 5459 of 2018.

As per the averments made in the writ petition, the petitioner joined as a Junior Engineer in the department of Housing and Urban Development, Punjab on 13.03.1980 and he was subsequently promoted as Sub Divisional Engineer on 20.12.2011. Thereafter the petitioner retired from service on 30.04.2012. Government of Punjab had issued a Circular dated 25.09.1998 (Annexure P-1) implementing the recommendations of 4th Pay Commission with regard to the Assured Career Progression Scheme (ACP) w.e.f. 01.01.1996. As per the said Circular, the employees were to be granted the benefit after completion of 8, 16, 24 and 32 years of service in lieu of the stagnation in a particular cadre for the lack of promotional posts.

It has been averred in para 4 of the writ petition that in view of the Instructions issued by the Government of Punjab dated 25.09.1998, the petitioner was granted the benefit of proficiency step up on completion of 24 years of service w.e.f. 13.03.2004 and his pay was revised after giving the said benefit from 9850/- to 10025/- vide order dated 17.08.2004. Petitioner kept on getting the same pay till a show cause notice was issued to him on 20.12.2010 (Annexure P-3) alongwith other similarly situated employees that the benefit of proficiency step up on completion of 24 years

of service as granted to the petitioner vide order dated 17.08.2004 was incorrect and the same needs to be withdrawn. Thereafter another show cause notice was issued to the petitioner on 10.01.2011 (Annexure P-4) asking as to why the excess amount paid to the petitioner from 13.03.2004 till 29.12.2010 be not recovered from him as the same was paid in excess than the entitlement of the petitioner.

No order was passed till the petitioner attained the age of superannuation on 30.4.2012 and after the petitioner retired, an order was passed on 24.05.2012 (Annexure P-6) that the pensionary benefits will be released to the petitioner after adjusting the excess amount paid to the petitioner on withdrawal of the proficiency step up which was granted vide order dated 17.08.2004. Thereafter, on 11.06.2012 (Annexure P-7) the recovery order was passed against the petitioner. It was ordered that a sum of ₹63,664/- be recovered from the petitioner on account of excess payment made due to the withdrawal of the benefit of ACP Scheme as given to the petitioner on 17.08.2004. This order dated 11.06.2012 (Annexure P-7) is under challenge in this writ petition.

Upon notice of motion, respondents through their counsel appeared and filed their respective replies in Court today itself. The same are taken on record and copies thereof have been supplied to learned counsel for the petitioner.

In the short replies, the respondents-PUDA has taken the plea that as the order was passed in the year 2012 and the same has been challenged now in the year 2018, the writ petition is liable to be dismissed on the sole ground of delay. Further, the respondent has tried to justify their

order contending that as the petitioner was not entitled for the grant of benefit of proficiency step up on completion of 24 years of service, the order withdrawing the said benefit was perfectly valid and consequently, recovery order of the excess amount was within the jurisdiction of the respondents and, therefore, prayed that the writ petition is liable to be dismissed.

Learned counsel for the petitioners have stated at bar that petitioner(s) are pressing their prayer only in respect of the recovery and not to re-fixation of the pay as ordered by the respondents after withdrawing the benefit of grant of 24 years' proficiency step up given to petitioner(s) on 17.08.2004. The challenge is restricted to the recovery which is being effected from the petitioner(s) in pursuance to the re-fixation of their pay.

In support of their argument that the recovery cannot be made from the petitioner(s), the petitioner(s) are relying upon the order passed by Hon'ble the Supreme Court in ***Rafiq Masih's case (supra)***.

Learned counsel for the petitioner(s) states that the petitioner (s)' case is squarely covered by para 12 of the abovesaid judgment, which reads as under :-

“12. 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.”*

Learned counsel for the petitioner(s) states that the case of the petitioner(s) is covered under Clause (ii) as well as Clause (iii) of para 12 of the judgment in ***Rafiq Masih's case (supra)***.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, the petitioner retired from service on 30.04.2012 whereas the actual order of the recovery was passed in June, 2012 i.e. after the retirement. Further, the benefit, which was being withdrawn in pursuance to which the recovery was being ordered, was given to the petitioner in August, 2004, whereas the recovery order was being passed in the year 2012 i.e. after a period of more than eight years, which is not permissible as per Clause (ii) and (iii) of para 12 of the judgment in ***Rafiq Masih's case (supra)*** reproduced hereinbefore.

Learned counsel for the respondents-PUDA is unable to rebut the said averments. He only states that the present writ petition was not

maintainable after a period of five years of passing the impugned order.

In respect of the objection taken by the respondents for the delay, the same is not justified and cannot be sustained. Once as per the settled principle of law that an employee is entitled for the benefit under a law, the same could not be denied to him on the ground of delay ignoring the facts of the case. Here the recovery was being effected from the petitioner after his retirement on the ground that the excess payment was made.

It is admitted that the order granting the benefit to the petitioners was passed by the respondents themselves on 17.08.2004 and the petitioners had no role to play in the same. The respondents granted the said benefit to the petitioners without there being any misrepresentation on their part. Once there is no misrepresentation on the part of the petitioners, the settled principle of law is that no recovery could be ordered. The law was the same on the day when the said order was passed and, therefore, in fact, the order of recovery was against the settled principle of law and could not have been passed and is to be treated as void order and, therefore, the objection of delay in approaching this Court, cannot be pressed in the present circumstances.

Learned counsel for the respondents states that in CWP Nos. 5428 of 2018, 5459 of 2018, 5472 of 2018, 5441 of 2018, 5385 of 2018 and 5463 of 2018, the petitioners retired in the year 2012, 2014, 2015 and 2017 respectively i.e. after the orders of re-fixation and recovery were passed, therefore, they cannot get the benefit of the judgment in ***Rafiq Masih's case (supra)*** as they were in service on the day when the order of recovery was passed. The said objection is also not correct for the reason that though the

petitioners in the above mentioned writ petitions retired after the passing of order of recovery but as per Clause (iii) of para 12 of the judgment in ***Rafiq Masih's case (supra)***, no recovery could be ordered in respect of an order which was passed five years before the order of recovery.

A bare perusal of the chart would show that benefit of ACP was granted in the year 2003/2004, whereas the same was withdrawn in December, 2010 which is much after the period of five years, hence petitioners become entitled for the benefit as envisaged in Clause (iii) of para 12 of the judgment in ***Rafiq Masih's case (supra)***, therefore, the cases of the petitioners in CWP Nos. 5428 of 2018, 5459 of 2018, 5472 of 2018, 5441 of 2018, 5385 of 2018 and 5463 of 2018 will be covered under Clause (iii) of para 12 of the judgment in ***Rafiq Masih's case (supra)*** and the recovery will be impermissible.

In view of the above, all the writ petitions are allowed. The order of recovery is set-aside and the respondents are directed to refund the amount as recovered from the petitioners in pursuance to the impugned order within a period of two months from receiving of the present order.

February 06, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*