

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

CWP-11401-2001 (O&M)

Date of decision: July 13, 2022

Sukhbir Singh

...Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Abhimanu, Advocate
for Mr. Rajesh Lamba, Advocate
for the petitioner.

Mr. R.D. Sharma, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter-alia*, is for issuance of a writ in the nature of Certiorari to quash letter dated 07.06.2001 (Annexure P-1), issued by respondent No.2, reducing the basic pay of the petitioner from Rs.4000/- to Rs.3725/- and to direct the respondents not to recover the arrears of salary already paid to the petitioner w.e.f. 01.05.1999.

2. Succinct facts first. Petitioner was appointed as Clerk in the respondent department and after the Fifth Pay Commission the basic pay of the petitioner was fixed in the scale of Rs.4000-6000. However, after more than 5½ years, vide impugned letter dated 07.06.2001, the basic pay of the petitioner was reduced w.e.f. 01.01.1996 to Rs.3050/- instead of Rs.4000/- already paid to the petitioner ordering recovery of arrears of salary w.e.f. 01.05.1999.

3. I have perused the pleadings and gone through the record.

4. Without going into the merits of the amount sought to be recovered, it has to be first noticed as to whether the pay fixation of the petitioner was wrongly done owing to which he was paid certain excess amount which is liable to be recovered. I am of the view that a mere fact that at the relevant time the petitioner was working as a Class-III employee, there is a legal presumption that he was not in a position to influence his superiors to pay him any excess amount. Further if the pay was wrongly fixed it is entirely attributable to the superiors of the department and the petitioner cannot be made to suffer to pay for no fault of his. There is nothing on record and even otherwise to show that the petitioner has indulged in any concealment, fraud or any misrepresentation of any kind which led to wrong fixation of his pay. In this aspect, reference may be had to the Supreme Court judgment titled as ***State of Punjab and others vs. Rafiq Masih (White Washer) etc.***, (2015) 4 SCC 334, the relevant para thereof is reproduced herein below:-

“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.”

5. Perusal of the above clearly reflects that wrong fixation of pay of the petitioner is insignificant as long as there was no misrepresentation on the part of the petitioner. I see no reason why the principles enunciated in Rafiq Masih’s case *ibid* cannot be applied in the present case and benefit thereof be not given to the petitioner.

6. Petition is allowed to the extent that excess amount already paid to the petitioner cannot be recovered from him.

(ARUN MONGA)
JUDGE

July 13, 2022
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No