

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

LPA No. 718 of 2021 (O & M)

Date of Decision: 10.10.2022

State of Punjab and othersAppellant(s)

Versus

Gurmit Singh and othersRespondent(s)

AND

LPA No. 703 of 2020 (O & M)

State of Punjab and othersAppellant(s)

Versus

Jatinderpal Singh and othersRespondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Rohit Ahuja, DAG, Punjab.

None for the respondents (in LPA-718-2021).

Mr. Shashi K. Rattan, Advocate,
for the respondents (in LPA-703-2020).

G.S.SANDHAWALIA, J. (Oral)

The present order shall dispose of two appeals i.e. LPA Nos.718 of 2021 and 703 of 2020 as the State is aggrieved against the common order dated 14.05.2019 passed by the learned Single Judge whereby, the orders of recovery dated 09.03.2015 were set aside. The learned Single Judge placed reliance upon the judgment of the Apex Court in *State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334* to grant the necessary relief.

The State of Punjab has now relied upon the judgment of the

Singh, 2016 (4) SCT 286 to submit that if there is an undertaking given and any excess payment has been made, the employee would be bound by the undertaking and, therefore, it is submitted that recovery was now being made in equated monthly installments and the learned Single Judge was not justified in allowing the writ petitions.

We have gone through the paper book and are of the considered opinion that though the Apex Court has noticed the earlier judgment passed in *Rafiq Masih case (supra)*, upon which learned Single Judge has relied upon, but while noticing the fact that the benefit had been given on 07.05.2003 and the same was sought to be recovered on 18.02.2004 in terms of the undertaking given on account of revision which had been effected. It was then noticed that on account of the undertaking given, the Officer was bound by the same while opting for the revised pay scale while taking the said view.

In the present case, the facts are slightly different to the extent that it would be clear that the benefit of revision was given w.e.f. 01.01.2006 vide notification dated 27.05.2009. The learned Single Judge noticed that the benefit was granted as per order dated 01.12.2007 as per the entry made in the service book. Thus, it is apparent that from 2007 onwards till 09.03.2015, no steps were taken to revise the pay. In such circumstances, we are of the considered opinion that the case would fall under Clause (iii) of Para No. 12 of the judgment in *Rafiq Masih (supra)* where recovery from employees cannot be made when excess payment has been made for a period in excess of 5 years before the order of recovery was issued. The said clauses read thus:-

“(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.”

Similarly, the benefit would also be granted to the writ petitioners who are working as ETT Teachers and who also belong to Class III and thus would also be covered under Clause (i) whereas in *Jagdev Singh's case (supra)*, the employee was a judicial officer.

In such circumstances, we are of the considered opinion that the judgment relied upon by the State in *Jagdev Singh's case (supra)* is distinguishable and not applicable to the facts and circumstances of the present cases. Resultantly, we find no merit in the present appeals and the same are dismissed.

(G.S.SANDHAWALIA)
JUDGE

10.10.2022
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(JAGMOHAN BANSAL)
JUDGE