

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

Sr. No.206

CWP No.19783 of 2014

Date of Decision: 27.05.2022

Shinderpal Kaur

.... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K.Arora, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

Mr. Vikas Chatrath, Advocate and
Mr. Abhishek Singla, Advocate
for respondents No.4 and 5.

HARSIMRAN SINGH SETHI, J. (ORAL)

The present petition has been filed challenging the order dated 25.08.2014 (Annexure P-5) passed by respondent No.5, wherein the excess amount paid to the petitioner amounting to Rs.2,08,185/- is sought to be recovered from the pensionary benefits paid to the petitioner on the ground that the pension of the petitioner was wrongly fixed by inadvertently paying the dearness allowance at the old rate of 87%.

Learned counsel for the petitioner argues that the husband of the petitioner, who was working with the Punjab Police, died while in service on 07.01.2008 and thereafter, the petitioner was extended the benefit of family pension starting from 08.01.2008.

Keeping in view the revision of pay scale, the pension was also revised and the petitioner continued to get the revised pension till she received a notice from the respondent in the year 2014 that though the petitioner was entitled for a pension of Rs.12,474/-, the same was revised to Rs.16,478/- inadvertently and therefore, the excess amount paid to the

petitioner is liable to be recovered. The said recovery is under challenge in the present petition.

After notice of motion, the respondents have filed the reply, wherein it has been mentioned that in the year 2012, while revising the pension of the petitioner, the same was inadvertently revised to Rs.16,478/- instead of the actual entitlement of the petitioner to Rs.12,474/-. Learned counsel for the respondents have submitted that at the time of getting the pension, the petitioner had given an undertaking that in case, the petitioner had agreed to refund or make good any amount paid to her for which she is not entitled to therefore, the respondent is entitled for the recovery of the excess amount.

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

In the present case, the recovery has been done from the pension admissible to the petitioner. The reason for recovery is that in the year 2012, while refixing the pension of the petitioner, the same was wrongly fixed while entering wrong data into the computer.

In the normal circumstances, the recovery from a retired employee is impermissible. The same is covered by the judgment of Hon'ble Supreme Court of India rendered in the case of **State of Punjab and others versus Rafiq Masih (White Washer) (2015) 4 SCC 334.**

The judgment of Hon'ble Supreme Court of India in **Rafiq Masih (supra)** has been considered by another Bench of Hon'ble Supreme Court of India in **Civil Appeal No.3500 of 2006** titled **High Court of Punjab & Haryana and others versus Jagdev Singh**, decided on

29.07.2016, wherein Hon'ble Supreme Court of India has held that where an employee has given an undertaking to recover the excess amount in case, it is found at later stage, the undertaking is complied with and the recovery of the excess amount is maintainable. The relevant paragraphs 9 of the judgment passed in **Jagdev Singh's case** (supra) is as under:-

“9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc1. this Court held that while it is not possible to postulate all situations of hardship 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.” (emphasis supplied).

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.”

Learned counsel for the petitioner has not disputed the fact that the petitioner has also given an undertaking to the said effect. That being so, the case of the petitioner is covered by **Jagdev Singh (supra)** and not by **Rafiq Masih (supra)**. Hence, the recovery of the excess amount from the petitioner in the facts and circumstances of this case, is permissible.

No ground is made out to grant the prayer of the petitioner as raised in the present petition.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

27.05.2022
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes