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

**(213)** **CWP-25821-2016**
**Date of Decision : July 07, 2022**

**Bal Krishan Sharma** **.. Petitioner**

**Versus**

**State of Haryana and others** **.. Respondents**

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

Present: Mr. Vikas Chatrath, Advocate, for the petitioner.

Mr. Raman Kumar Sharma, Additional Advocate General, Haryana.

Mr. I.P. Singh, Advocate, for respondent No.3.

**HARSIMRAN SINGH SETHI J. (ORAL)**

In the present petition, the challenge is to the order dated 07.11.2016 (Annexure P-1) by which, excess payment made to the petitioner is being recovered.

Learned counsel for the petitioner argues that the petitioner retired on attaining the age of superannuation on 30.11.1990 and petitioner was being paid the regular pension. In the year 2016, the petitioner received an order, a copy of which has been attached as Annexure P-1 stating that the petitioner has received pension more than his entitlement and the excess amount paid to the petitioner be refunded back. The said order (Annexure P-1) is under challenge in the present petition on the ground that no recovery of excess amount can be done from the retired employee keeping in view the judgment of the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.***

After notice of motion, the respondents have filed the reply wherein, the respondents have stated that at the time when the petitioner retired, he had given an undertaking that in case, any excess payment is made to the petitioner, the same will be refunded to the respondents.

Learned counsel for the respondents has submitted that even in respect of recovery notice Annexure P-1, the petitioner has not disputed the excess amount and has rather prayed that he will return the excess amount in installments, hence, once the petitioner himself has agreed to retun the amount in installments coupled with the fact that at the time of receiving the benefits, the petitioner has given an undertaking extending a right to the respondents to recover the excess payment, the judgment in ***Civil Appeal No. 3500 of 2006 titled as High Court of Punjab & Haryana and others Vs. Jagdev Singh, decided on 29.07.2016***, will be applicable and not ***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 payment of excess amount is not being disputed. The undertaking given by the petitioner is also not being disputed. That being so, once the petitioner has given an undertaking at the time of receiving the pension that any excess payment given to him, will be refunded back, the petitioner is under an obligation to refund the excess payment. In ***Jagdev Singh's case (supra),*** the Hon'ble Supreme Court of

India held that where an employee at the time of receiving the benefit has given an undertaking that in case, the said payment is not found entitled for, the same will be refunded, the Department is well within its right to recover the same. The relevant paragraph of the said judgment is as under:-

> *“ - x - x -*
>
> *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.*

*- x - x -"*

Keeping in view the above, as the petitioner has given an undertaking at the time of receiving the pension and undisputedly, the petitioner has received the amount beyond his entitlement, in the facts and circumstances of the present case, keeping in view the settled principle of law in ***Jagdev Singh's case (supra)***, no fault can be found with the respondents in recovering the amount from the petitioner.

No ground is made out to grant the petitioner the benefit as being prayed in the present petition.

Dismissed.

**July 07, 2022** **(HARSIMRAN SINGH SETHI)**
*harsha* **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes