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

\*\*\*

**CWP-2525-2020(O&M)  
Date of Decision: 23.02.2023**

Vaishno Dass

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Suvir Kumar, Advocate,  
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

Mr. Parminder Singh, Advocate,  
for respondent Nos.2 & 3.

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**JASGURPREET SINGH PURI, J. (ORAL)**

The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing/setting aside the order dated 22.01.2020 (Annexure P-3) issued by respondent No.3 to the petitioner vide which the respondent No.3 has ordered to recover the excess payment made to the petitioner from his pension.

Learned counsel for the petitioner has submitted that the petitioner joined as Meter Reader in the respondent-Corporation on

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03.01.1966. At that point of time, the Corporation was known as the Punjab State Electricity Board and now it is Punjab State Power Corporation Limited. The petitioner retired on 30.11.2000 as Cashier. Thereafter, he was granted pension and he kept on receiving the pension which was properly sanctioned by the respondent-Corporation. However, vide Annexure P-3 dated 22.01.2020, the recovery of an amount of Rs.1,44,247/- is sought to be effected after a period of about 20 years of his retirement on the ground that while he was in service some excess payment was paid to him for the period pertaining to January, 2006 to December, 2019 and with regard to that excess payment now recovery is sought to be effected from the petitioner after about 20 years of his retirement which is not permissible in view of the judgment passed by the Hon'ble Supreme Court in "*State of Punjab and others Vs. Rafiq Masih (White Washer) and others*", 2015(4) SCC 334, especially in view of the fact that the petitioner is now of the age of 79 years and he had retired as Cashier which falls in Category 'C' (Group III). He further submitted that after the passing of the aforesaid impugned order, an amount of Rs.15,000/- has already been recovered from the petitioner and thereafter, an interim order was passed by this Court whereby the recovery has been stayed.

On the other hand, Mr. Parminder Singh, learned counsel for the respondent-Corporation submitted that the pension of the petitioner was wrongly fixed from 01.01.2006 at the time of revision of pay-scale and the pension was fixed vide PPO No.456 of 2008 at Rs.6,300/- per month. The basic pay at the time of fixation of pay w.e.f. 01.01.2006, the basic pension of the petitioner was fixed at Rs.4,200/- per month erroneously instead of

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basic pension of Rs.4,000/- per month and he started getting Rs.10,441/- instead of Rs.9,967/- per month and in this way, an excess amount of pension has been paid to him. It was only when the mistake came to the notice of the Audit Department while conducting audit for the year 2018-19 that the mistake was detected that some excess payment has been paid to the petitioner. He further submitted that at the time of the retirement of the petitioner in the year 2000, he also furnished an affidavit vide Annexure R-2/3 wherein he had himself stated that he has no objection in case any correction of the amount which is paid to him is made and he promises to return the excess amount. Learned counsel for the respondent-Corporation submitted that in view of the aforesaid undertaking the ratio of the judgment of the *State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)* will not apply in the present case while on the other hand, the latest judgment of the Hon'ble Supreme Court passed in "*High Court of Punjab & Haryana and others Vs. Jagdev Singh*" 2016(14) SCC 267 will apply in the present case, since he had furnished an undertaking at the time of his retirement.

I have heard the learned counsel for the parties.

It is a case where the petitioner had retired as Cashier in the year 2000 i.e. on 30.11.2000. After a period of about 20 years, the impugned order (Annexure P-3) has been passed which is of date 22.01.2020. The plea taken by the respondent-Corporation was that at the time when the benefit of revision of pay-scale was granted w.e.f. 01.01.2006, some excess amount was paid to the petitioner because of wrong fixation. As per the reply filed by the respondent-Corporation and

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submissions made by learned counsel, the mistake was detected by the Audit Department and that is why now recovery has been sought to be effected. Another argument which has been raised by the learned counsel for the respondent-Corporation was that an undertaking was given by the petitioner at the time of retirement that he will pay back the excess amount, and therefore, judgment of *State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)* will not apply.

Both the arguments raised by the learned counsel for the respondent-Corporation are not sustainable. Firstly, even if an excess amount on the basis of wrong fixation of pay while granting benefit w.e.f 01.01.2006 is paid to the petitioner, the same cannot be recovered from him after about 20 years of his retirement. The action of the respondent-Corporation is totally contrary to the law laid down by the Hon'ble Supreme Court in *State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)* particularly in view of the fact that the petitioner retired as Cashier which falls in Class III (Group 'C' Category). The relevant portion of the aforesaid judgment is reproduced as under:-

*“18. 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.”*

The facts and circumstances of the case suggest that it is not the case of the respondent-Corporation that it was due to some fraud or misrepresentation of the petitioner that the said fixation of pay was made during his service but it was made by the respondent-Corporation on their own and recovery is now sought to be effected after a period of about 20 years of retirement of the petitioner. Therefore, it will not only fall in Clause (i) & (ii) but also in Clause (v) as reproduced above, since this Court is of the considered view that the petitioner is now of the age of 79 years and it will be totally harsh and inequitable to recover amount from him.

So far as the second argument raised by the learned counsel for

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the respondent-Corporation that the petitioner had furnished an undertaking vide Annexure R-2/3 is concerned, the same is also not sustainable in view of the fact that the aforesaid undertaking was given by the petitioner at the time of retirement in the year 2000 which is a stereotyped undertaking and is also generalized in nature. At that point of time, the benefit of revision of pay-scale w.e.f. 01.01.2006 was not contemplated. Therefore, the furnishing of such an undertaking would not be of any avail to the respondent-Corporation. In the care of **High Court of Punjab & Haryana and others Vs. Jagdev Singh's case (supra)**, the Hon'ble Supreme Court was dealing with a particular situation whereby before granting the benefit of pay-scale to the employees, an undertaking was taken from the employees with regard to the fact that in case there is some recovery which is to be made thereafter, then the employees will have no objection with regard to the same and in this way, the employees were already put to notice with regard to a specific benefit which was to be conferred upon them. However, in the present case, the petitioner had already retired in the year 2000 whereas the benefit has been granted from 01.01.2006 and therefore, the facts and circumstances of the present case are totally distinguishable from the aforesaid judgment in **High Court of Punjab & Haryana and others Vs. Jagdev Singh's case (supra)**.

In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by the judgment of Hon'ble Supreme Court passed in **State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (Supra)**, and therefore, the respondent-Corporation is not entitled for recovery of any amount from the

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pension of the petitioner.

Consequently, the impugned order dated 22.01.2020 (Annexure P-3) is illegal, and therefore, is quashed. A perusal of the impugned order would show that an amount of Rs.15,000/- has already been recovered from the petitioner. The respondent Nos.2 & 3 are, therefore, directed to refund the amount of Rs.15,000/- or any other amount which has been deducted out of the aforesaid amount of Rs.1,44,247/- to the petitioner within a period of four months from today along with interest @ 6% per annum.

The present petition stands allowed.

23.02.2023

*Bhumika*

(JASGURPREET SINGH PURI)  
JUDGE

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|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable:        | Yes/No |