

CWP-11995-2017

-1-

2023:PHHC:101850

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

CWP-11995-2017

Date of Decision:07.08.2023

DR. AMANDEEP SINGH AND OTHERS

..... Petitioners

Versus

**CENTRAL UNIVERSITY OF PUNJAB (IN SHORT CUPB) &
OTHERS**

..... Respondents

AND

CWP-11749-2017

SURINDER SINGH KHURANA AND ANOTHER

....Petitioners

Versus

**CENTRAL UNIVERSITY OF PUNJAB BATHINDA AND
ANOTHER**

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sameer Sachdeva, Advocate
for the petitioners in CWP-11995-2017.

Mr. Ajay Bansal, Advocate for
Mr. Karamveer Singh Banyana, Advocate
for the petitioners in CWP-11749-2017.

Mr Shivoy Dhir, Advocate
for the respondents No.1 and 2.

Mr. Deepanjay Sharma, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-11995-2017 and CWP-11749-2017 are disposed of as issue involved in both the petition is common. For the sake of brevity and convenience facts are borrowed from CWP-11995-2017.
2. The petitioners through instant petition under Article 226/227 of the Constitution of India are seeking setting aside of orders dated 28.10.2016 (Annexure P-9) and 17.05.2017 (Annexure P-16)

whereby respondent authorities have reduced house rent allowance 20% to 10% of salary w.e.f. 2011 and initiated recovery proceedings for the HRA paid @ 20% from 2011 to October, 2016.

3. The brief facts of the case which are necessary for the adjudication of present petition are that respondent University was established in 2009 as an autonomous University. All the executive powers of Management and Administration vest with Executive council. The petitioners joined teaching staff of the respondent University. They were paid HRA @ 20% of salary from 2011. They were paid HRA @ 20% considering Bathinda- B-1 Class City. The record of the respondent University came to be audited and during the course of audit, it was found that Central Government has not issued any notification to grant HRA @ 20% whereas as per policy petitioners are entitled to HRA @ 10%. Accordingly, it was decided to grant HRA @ 10% instead of 20%. The respondent further decided to make recovery with respect to differential amount of HRA i.e. difference between 20% and 10%. The recovery was found for the period 2011 to October, 2016.

4. Learned counsels for the petitioners *inter alia* contend that Punjab Government has declared Bathinda- B-1 Class City and respondent University relying upon decision of State of Punjab had granted HRA @ 20%. The petitioners left their previous job and joined University under impression that they are going to get HRA @ 20%. They have hired accommodation considering HRA @ 20%. The act of respondent is unilateral act and respondent without granting opportunity to petitioners has decided to reduce HRA from 20% to 10% and further initiated recovery proceedings. The case of the petitioners is squarely

covered by judgment of Hon'ble Supreme Court in *State of Punjab Vs. Rafiq Masih (White Washer) 2015 (4) SCC 334*.

5. Learned counsel for the petitioners further relied upon Office Memorandum dated 02.03.2016 issued by Government of India. The said Office Memorandum is based upon judgment of Hon'ble Supreme Court in *Rafiq Masih (White Washer)* (supra).

6. Per contra, learned counsel for the respondent with respect to recovery submits that petitioners have been given time to make payment in installments and with respect to future payment submits that it is a policy matter and respondent being Central University is not bound by any notification of the State Government. As per policy of the Central Government, the petitioners are eligible to HRA @ 10%.

7. On being confronted with judgment of Hon'ble Supreme Court in *Rafiq Masih (White Washer)* (supra) and Office Memorandum, learned counsel for the respondents expressed his inability to controvert.

8. The Hon'ble Supreme Court in *Rafiq Masih (White Washer)* (supra) with respect to excess payment of salary/emoluments has observed that excess payment cannot be recovered in following situations.

“(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 be 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.”

9. The Central Government by Office Memorandum dated 02.03.2016 has advised all Ministries/Departments to deal with issue of wrongful/excess payment make to Government servants in accordance with judgment of Hon’ble Supreme Court in **Rafiq Masih (White Washer)** (supra).

10. In view of statement of both sides, the case of the petitioners with respect to recovery of excess payment of HRA is squarely covered by judgment of Hon’ble Supreme Court read with Office Memorandum issued by Central Government, thus, respondents are directed not to make any recovery of alleged excess payment of HRA. With respect to future payment of HRA @ 20% or 10%, the petitioners are at liberty to move representation to the respondent University which would consider their representation in accordance with law.

(JAGMOHAN BANSAL)
JUDGE

07.08.2023
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No