



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

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**CWP-6672-2018****Date of decision : 30.07.2024**

Nirmal Singh and others

.....Petitioners

Versus

Punjab Water Resources Management and  
Development Corporation Limited

.....Respondent

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

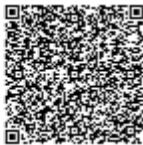
Present : Mr. Garvit Kalra, Advocate for the petitioners.

Mr. Manish Joshi, Advocate for the respondent.

**NAMIT KUMAR, J. (Oral)**

1. The petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ of certiorari, quashing the orders dated 21.06.2011, 05.11.2012, 15.02.2011, 26.04.2011, 30.08.2011 and 11.08.2011 (Annexures P-2 to P-7), whereby the benefit of 24 years proficiency step up granted to the petitioners has been withdrawn and for quashing the orders dated 29.02.2016, 29.01.2016, 04.06.2015, 18.12.2014, 24.08.2012, 05.08.2014, 18.01.2016 and 21.01.2016 (Annexures P-8 to P-15), whereby recoveries have been effected from the leave encashment of the petitioners after their retirement. Further, issuance of a writ in the nature of mandamus has been sought, directing the respondent to release the entire amount which has been recovered from the leave encashment of the petitioners.

2. Brief facts of the case as have been pleaded in the present



petition are that the petitioners, who were working with the respondent-Corporation, were granted the benefit of 24 years proficiency step up on different dates. However, in pursuance to the instructions issued by Government of Punjab, Finance Department, the abovesaid benefit has been withdrawn from the petitioners vide impugned orders Annexures P-2 to P-7 and recoveries have been effected from their leave encashment after their retirement, vide impugned orders Annexures P-8 to P-15. The details of which are as under :-

| Name of Petitioners | Date of joining | Date of 24 years proficiency step up | Date of withdrawal of 24 years proficiency step up | Date of retirement | Date of sanctioning of leave encashment | Amount of recovery |
|---------------------|-----------------|--------------------------------------|----------------------------------------------------|--------------------|-----------------------------------------|--------------------|
| Nirmal Singh        | 15.05.1980      | 26.07.2004<br>w.e.f.<br>15.05.2004   | 21.06.2011<br>w.e.f.<br>15.05.2004                 | 31.01.2016         | 29.02.2016                              | 67,368/-           |
| Arun Kumar Asthana  | 20.03.1978      | 28.01.2003<br>w.e.f.<br>20.03.2002   | 04.09.2012<br>w.e.f.<br>20.03.2002                 | 31.07.2015         | 29.01.2016                              | 97,094/-           |
| Charanjit Julka     | 02.01.1978      | 24.04.2003<br>w.e.f.<br>02.01.2002   | 15.02.2011<br>w.e.f.<br>02.01.2002                 | 30.09.2014         | 04.06.2015                              | 96,725/-           |
| Yougesh Kumar       | 14.06.1978      | 02.05.2003<br>w.e.f.<br>14.06.2002   | 15.02.2011<br>w.e.f.<br>14.06.2002                 | 31.03.2015         | 18.12.2014                              | 65,258/-           |
| Chand Singh         | 06.06.1978      | 11.12.2002<br>w.e.f.<br>06.06.2002   | 15.02.2011<br>w.e.f.<br>06.06.2002                 | 31.01.2012         | 24.08.2012                              | 77,854/-           |
| V.K. Bansal         | 28.09.1976      | 07.06.2002<br>w.e.f.<br>28.09.2000   | 26.04.2011<br>w.e.f.<br>28.09.2000                 | 30.04.2013         | 05.08.2014                              | 32,635/-           |
| Charanjit Singh     | 11.04.1980      | 02.09.2004<br>w.e.f.<br>11.04.2004   | 30.08.2011<br>w.e.f.<br>11.04.2004                 | 30.09.2015         | 18.01.2015                              | 58,297/-           |
| Karamjit Singh      | 21.04.1980      | 25.10.2004<br>w.e.f.<br>21.04.2004   | 11.08.2011<br>w.e.f.<br>21.04.2004                 | 30.06.2015         | 21.01.2016                              | 58,588/-           |

The petitioners have submitted various representations to the respondent-Corporation against the aforesaid recoveries but to no

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avail. Hence, this petition.

3. Learned counsel for the petitioners submits that after the retirement of the petitioners, recoveries, being alleged excess payment made to them on account of 24 years proficiency step up, have been effected from their leave encashment vide impugned orders (Annexures P-8 to P-15). He submits that the impugned recoveries have been effected without passing any specific order(s) and without issuance of any show cause notice or personal hearing in unilateral manner, which is not only in violation of the principles of natural justice but also against the law laid down in judgment of the Hon'ble Supreme Court passed in *State of Punjab Vs. Rafiq Masih (White Washer) and others* : *2015(1) S.C.T. 195*.

During the course of hearing learned counsel for the petitioners restricts his claim qua refund of amount recovered from the leave encashment of the petitioners, along with interest.

4. On the other hand, learned counsel for the respondent, while referring to the averments made in the reply, submits that the Government of Punjab, Finance Department, vide instructions dated 03.06.2005, has withdrawn the 24 years proficiency step up which was already granted to the petitioners and in compliance of the abovesaid notification, the pay of the petitioners has been re-fixed after withdrawing the 24 years proficiency step up and the recoveries have been effected from the amount of leave encashment of the petitioners. Therefore, there is no illegality or infirmity in the impugned orders



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(Annexures P-8 to P-15) as the excess payment was made to the petitioners and the same is liable to be recovered from them.

5. I have heard learned counsel for the parties and perused the relevant documents.

6. The stand taken by the respondent-Corporation is not sustainable as even if an excess amount on the basis of 24 years proficiency step up (which has been withdrawn lateron) paid to the petitioners relates to the period from 2000 to 2011, the same cannot be recovered from them after their retirement. The action of the respondent-Corporation is totally contrary to the law laid down by the Hon'ble Supreme Court in ***Rafiq Masih (White Washer) and others case (Supra)***. The relevant portion of the aforesaid judgment is reproduced as under:-

*“12. 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.”*

7. The facts and circumstances of the present case suggests that it is not the case of the respondent-Corporation that it was due to some fraud or misrepresentation of the petitioners, who were working against Class III post, that they were granted excess pay but it was granted by the respondent-Corporation on their own.

8. Moreover, the recoveries have been effected by the respondent-Corporation in violation of the principles of natural justice as neither any show cause notice was issued to the petitioners nor they were granted an opportunity of personal hearing.

9. In view of the above, this Court is of the considered view that the case of the present petitioners is squarely covered by Clauses (i), (ii) and (iii) of Para 12 of the judgment of Hon’ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***.

10. In view of the above, the impugned orders dated 29.02.2016, 29.01.2016, 04.06.2015, 18.12.2014, 24.08.2012, 05.08.2014, 18.01.2016 and 21.01.2016 (Annexures P-8 to P-15), whereby recoveries have been effected from the leave encashment



of the petitioners, are set aside. The respondent-Corporation is directed to refund the amount, deducted from the leave encashment, to the petitioners, within a period of 03 months from the date of receipt of certified copy of this order, along with interest @ 6% per annum from the date the same was effected from the petitioners till its actual payment.

11.           So far as grievance of the petitioner for withdrawal of 24 years proficiency step up is concerned, liberty is granted to the petitioners to raise their grievances at appropriate level in accordance with law.

12.           The present petition is partly allowed in the above terms.

30.07.2024  
*Kothiyal*

(NAMIT KUMAR)  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |