



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

127

CWP-1340-2025

Date of Decision: 29.01.2025

Rajkali

.....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Amit Malik, Advocate,
for the petitioner.

Ms. Rajni Gupta, Addl. A.G., Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition filed under Articles 226 and 227 of the Constitution of India is seeking setting aside of memo dated 27.11.2024 whereby respondent has ordered to recover a sum of Rs.7,08,610/- on account of excess financial assistance paid to her.

2. The petitioner is widow of Mr. Sukhchain-Assistant Lineman. The petitioner's husband passed away in harness on 07.02.2009. As per Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short '2006 Rules'), she was entitled to monthly financial assistance till 07.02.2021. The financial assistance is equal to salary which the deceased was drawing at the time of his death. The petitioner after 07.02.2021 was entitled to family pension. The petitioner continued to receive monthly assistance till 07.02.2024. There is substantial difference in the amount



of financial assistance and monthly pension. On account of continuation of monthly assistance, the petitioner got excess payment of Rs.7,08,610/-. The respondent, realizing its mistake, stopped monthly assistance and directed the petitioner to deposit excess payment already received.

3. Mr. Amit Malik, learned counsel for the petitioner submits that it is settled proposition of law that excess payment, if any, made to Class-C or Class-D employees cannot be recovered from pension. The husband of petitioner was Class-C employee. The excess payment cannot be recovered from pension of Class-C employee and petitioner is widow of Class-C employee and she is getting family pension. Thus, her case is on better footing. In support of his contention, he relies upon judgment of Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334*** as well as instructions dated 20.01.2017 issued by the State Government.

4. Notice of motion.

5. Ms. Rajni Gupta, Addl. A.G., Haryana who is present in Court accepts notice and submits that a sum of approximately Rs.2,00,000/- has already been recovered. She expressed her inability to controvert applicability of judgment of Supreme Court in ***Rafiq Masih (supra)*** and instructions dated 20.01.2017 issued by the State Government.

6. I have heard the arguments and perused the record.

7. The Supreme Court in ***Rafiq Masih (supra)*** has held that recovery from Group-C and Group-D employees should not be effected with respect to excess payment. The Court has further held that no recovery should be effected from retired employees or who are due to retire within one year from the order

of recovery. The Court has further held that where it is found that recovery



would be harsh or arbitrary, it may be set aside. The relevant extracts of the judgment read as:-

"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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

7.1 The Supreme Court in ***High Court of Punjab and Haryana and***

others vs. Jagdev Singh, (2016) 14 SCC 267 has diluted its earlier judgment in



Rafiq Masih (supra). It has been held that where an employee has furnished undertaking to the effect that recovery may be effected from him, if there is excess payment, the employer is competent to recover in view of undertaking. Relevant extracts of the judgment read as:-

"10. In State of Punjab v. Rafiq Masih [State of Punjab v. Rafiq Masih, (2015) 4 SCC 334 : (2015) 2 SCC (Civ) 608 : (2015) 2 SCC (L&S) 33] 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 : (SCC pp. 334-35)

(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."



8. The respondent has issued instructions dated 20.01.2017 which are based upon judgment of Supreme Court in **Rafiq Masih (supra)** as well as **Jagdev Singh (supra)**. The instructions dated 20.01.2017 are reproduced as below:-

From

*Additional Chief Secretary to Government Haryana, Finance
Department, Haryana*

To

1. *All the Heads of Departments in Haryana.*
2. *All the Divisional Commissioners in Haryana.*
3. *All the Deputy Commissioners/SDOs(Civil) in Haryana.*
4. *Registrar, Punjab & Haryana High Court.*

Dated Chandigarh, the 20th January, 2017.

Subject:

***Regarding Recovery of Excess Payments/Amount Made to
Government Employees and Other Recipients.***

Sir,

I am directed to invite your attention to the Finance Department's instruction bearing even No, dated 23.02.2018 on the subject noted above that had been Issued pursuant to the judgment of Hon'ble Apex Court in the Civil Appeal No. 11527 of 2014 State of Punjab and others etc Vs. Rafiq Masih (White Washer) etc. and to state that this Issue had again been adjudicated upon by the Hon'ble Apex Court vide its judgment dated 29.07.2016 in the case of Civil Appeal No. 3500 of 2006 - High Court of Punjab and Haryana and others Vs Jagdev Singh. In this judgment the



Hon'ble Apex Court has again examined the Law laid down in the Rafiq Masih case supra and clarified as well as elaborated upon certain clauses where the recovery of excess amount paid to Govt. employee be made and also otherwise.

2. *The Govt. has examined the Law laid down by the Hon'ble Apex Court In the Jagdev Singh case supra and accordingly decided to issue amending instructions/guldelines w.e.f. 23.02.2016 I.e. from the date of issue of earlier Instructions, to regulate the issue of recovery of over payment made to Govt. employees and other recipients.*

3. *Accordingly the following clauses are hereby laid down to regulate the Issue of recovery as such with a direction for the compliance with the same meticulously.:-*

I. Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) may not be made.

II. Recovery from retired employees or employees who are due to retire within one year, of the order of recovery may not be made.

III, Recovery may not be made 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 may not be made 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. Recovery cannot be made in any other case, where the Court arrives at the conclusion, that recovery if made from the employees, 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.

VI. The principle enunciated in clauses I, II and III above cannot apply to a situation where an employee as well as other claimant/recipient 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 where he has submitted an undertaking while receiving the benefit/payment and he shall be bound by the undertaking.

4. *The above provision of exemption shall not be applicable and recovery shall be made where excess payment received by the claimant/recipient is due to misrepresentation made or/and fraud played by the recipient.*

5. *The responsibility of the erring officers/officials responsible for making excess payment, in case of error (other than negligence/lapse/mala fide), is required to be fixed, after adopting the proper procedure.*



6. *In case of any negligence/lapse/malafied on the part of person responsible for making excess payment, action shall be taken against him, after adopting the proper procedure, and recovery shall also be made from him.*

7. *A clear undertaking must also invariably be obtained from every Government Employee/Pensioner/any of the Claimants/Recipients whatsoever while making payment other than the routine/regular salary/pension (in case of Government Employee/Pansioner) to the effect of refunding the excess amount, if so found.*

All the Administrative Secretaries and Head of Departments are requested to take final decision on each case of their department keeping in view instant Instructions and all the court cases pertaining to their department that are still pending for for adjudication before the Hon'ble Court may be contested on the basis of the same.

Copy of this letter is also available on website www.finhry.gov.in and same can be downloaded therefrom”.

9. The petitioner is claiming that she is getting family pension, thus, as per judgment in **Rafiq Masih (supra)** and afore-cited instructions, no recovery can be effected from her. This Court finds that case of petitioner is covered by judgment of Supreme Court in **Rafiq Masih (supra)** as well as instructions issued by respondent. Thus, respondent cannot effect recovery from family pension.



10. In the case in hand, there is another facet of the matter which needs to be examined. The petitioner got excess payment after the death of her husband. It is not the case of excess payment received during service or on account of excess pension. She was getting monthly financial assistance which was required to be discontinued on a particular date. She was entitled to family pension after a particular date. On account of mistake on the part of concerned official, she continued to receive monthly assistance instead of family pension.

11. Considering the judgment of Supreme Court in *Rafiq Masih (supra)* and instructions dated 20.01.2017 issued by State Government and to maintain balance, this Court finds it appropriate to direct the respondent not to effect further recovery. The petitioner would continue to receive family pension without any further deduction.

12. Disposed of in the above terms.

29.01.2025
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes