

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123

CWP-2191-2025

Date of Decision: 28.01.2025

Ranvir Singh Malik

.....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sandeep Panwar, Advocate,
for the petitioner.

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

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking direction to respondent to pay interest on delayed payment of leave encashment to the tune of Rs.2,27,400/- and set aside recovery notice dated 16.02.2024 (Annexure P-9) whereby respondent has raised demand of Rs.8,02,330/-.

2. The petitioner on 31.05.2014 retired from the office of Housing Board, Haryana as Executive Engineer. The dispute erupted between a group of employees and respondent with respect to fixation of their pay and consequential benefits. They preferred *CWP-1852-2003, Vijay Kumar Verma and others vs. State of Haryana and others* before this Court. The matter came to be settled by way of judgment dated 04.12.2014 passed by this Court. The

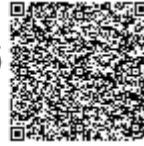
operative portion of judgment dated 04.12.2014 is reproduced as below:-



“Consequently, the respondent-Board is directed to grant the same pay scale to the petitioners which was granted to the engineers of Public Works Department (PWD) of the respondent-State w.e.f. 01.01.1996 with all consequential service benefits. Since the legally justified claim of the petitioners has been illegally withheld during all these years, petitioners shall be entitled for the arrears of salary with interest at the rate of 9 % from the date the amount became due till the date of actual payment. Let the needful be done within a period of two months from the date of receipt of a certified copy of this order. If needful is not done within the stipulated period, petitioners shall be entitled for interest at the rate of 12 % per annum.”

3. The respondent unsuccessfully preferred intra-court appeal against aforesaid judgment dated 04.12.2014. The respondent, in compliance of judgment dated 04.12.2014 of this Court, vide order dated 03.08.2018 followed by order dated 14.09.2018 refixed pay of the petitioner. The petitioner was paid approximately Rs.35,00,000/- which included interest @ 12% per annum as awarded by this Court. The petitioner was also paid differential amount of leave encashment Rs.2,27,400/-. The respondent on 24.06.2020 recalculated pay and allowances of the petitioner and found that there was excess payment to the tune of Rs.6,51,137/-. The respondent made further calculation and came to a conclusion that there is excess payment to the tune of Rs.8,02,330/-. The respondent vide notice dated 16.02.2024 directed the petitioner to deposit a sum of Rs.8,02,330/- which was paid in excess of his actual entitlement.

4. Mr. Sandeep Panwar, learned counsel for the petitioner submits that respondent made calculation on 14.09.2018 as per directions of this Court. The payment as per calculation was made on 31.10.2018. The respondent at its own



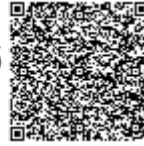
that there was excess payment to the tune of Rs.8,02,330/-. The respondent has issued recovery notice after 5 years from the date of payment which is bad in the eye of law. The case of petitioner is squarely covered by judgment of Supreme Court in *State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334* as well as instructions dated 20.01.2017 issued by State Government. The instructions have been issued in view of judgment of Supreme Court in *High Court of Punjab and Haryana and others vs. Jagdev Singh, (2016) 14 SCC 267*. The respondent cannot make recovery from a retired employee at the fag end of his life.

5. Notice of motion.

6. Ms. Rajni Gupta, Addl. A.G., Haryana who is present in Court accepts notice and submits that it is not a case of excess payment during service whereas it is a case of wrong calculation while determining arrears. The order dated 14.09.2018 whereby arrears were determined was passed much after the date of retirement of the petitioner. He belongs to Group-A, thus, he is not entitled to benefit of judgment of Supreme Court in **Rafiq Masih (supra)** as well instructions dated 20.01.2017 issued by State Government.

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

8. The Supreme Court in **Rafiq Masih (supra)** has held that recovery from Group-C and Group-D employees should not be made with respect to excess payment. The Court has further held that no recovery should be made 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



"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.

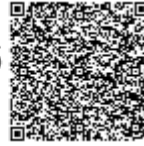
(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(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."

8.1 The Supreme Court in **Jagdev Singh (supra)** 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 made from him, if there

is excess payment, the employer is competent to recovery 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.

(emphasis supplied)"

9. The respondent has issued instructions dated 20.01.2017 which are based upon judgment of Supreme Court in **Rafiq Masih (supra)** as well as

Shivani Gupta
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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.*

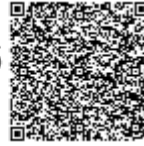
3. *Accordingly the following clauses are hereby laid down to regulate the Issue of recovery as such with a direction for the compliance with the same meticulously.:-*

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/malafied), 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/Pensioner) 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 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".

10. The petitioner is claiming that he is a retired employee, thus, as per judgment of Supreme Court in **Rafiq Masih (supra)** and afore-cited instructions, no recovery can be effected from him. He is further claiming that there are many judgments where Courts have held that no recovery should be made from a retired employee.

The facts of the instant case are different. In the above cited judgments as well as many other judgments where demand was set aside, the recovery was attempted to be made from a retired employee on account of



excess payment made during his service or where excess payment was made in monthly pension. It is a case where lump-sum payment after 4 years from the date of retirement was made and there was calculation error. The petitioner was paid a handsome amount of approximately Rs.35,00,000/- after 4 years from the date of his retirement. He was neither paid excess salary during his service nor it was case of excess payment of monthly pension. It is a case where excess payment was made much after the date of retirement and excess payment was in the form of lump-sum amount. It was public money and State has every right to recover excess payment which is due to calculation error. The petitioner cannot take advantage of mistake of someone. The excess calculation was detected in 2020 which was further enhanced in 2023 and recovery notice was issued in 2024. The first calculation was made within two years from the date of excess payment. Thus, the amount which was found excess within 2 years should be returned by the petitioner to respondent. The amount over and above the said amount which was further calculated and attempted to be recovered by notice in 2024 is bad in the eye of law because respondent was bound to take action within reasonable period and in the present facts and circumstances, this Court finds that three years period was reasonable period. The first calculation was made within two years from the date of payment of excess arrears, thus, the excess payment which was determined in 2020 needs to be recovered from the petitioner and he is liable to pay the said amount.

11. The petitioner is claiming interest on differential amount of leave encashment which was paid in 2018. Recovery beyond 3 years is bad in the eye of law, similarly, demand of interest after 5 years especially when this Court



clear. The demand of petitioner of interest on differential leave encashment is not sustainable. It is further apt to notice that he has got interest @ 12% per annum on the differential amount of pay and allowances except leave encashment.

12. In the wake of above discussion and findings, this Court is of the considered opinion that petitioner is liable to pay excess amount to the tune of Rs.6,51,137/- and he is neither liable to pay any excess amount over and above the said amount nor is entitled to interest on the delayed payment of leave encashment.

13. It is made clear that aforesaid amount, if includes interest i.e. any amount over and above the amount paid as excess to the petitioner, would not be recovered. The respondent is advised to supply break up of said amount to petitioner within three weeks from today and recover excess payment in easy installments.

14. Disposed of in the above terms.

28.01.2025
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes