IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

528

CWP-4478-2003 (O&M)
Date of decision: 05.04.2025

Jaswant Kaur and Others

....Petitioners

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : None for the petitioners

Mr. Arun Gupta, DAG Punjab

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AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for directing the respondents to grant dearness allowance and to not recover the amount already paid.

2. As is apparent from the pleadings that there was no fraud or any misrepresentation as alleged against the petitioners, who are widows and house-wives, in receipt of family pension, upon which dearness allowance had been paid and as such reliance is placed on the judgment of Hon'ble the Supreme Court in the case of **Sahib Ram vs. State of Haryana**, 1995 (1) SCC 668.

3. The Division Bench while issuing notice of motion on 25.03.2003, had ordered this case to be taken up along with CWP-2730-2003 titled as **Jit Kaur and Others vs. State of Punjab and Another** and issued interim instructions in the same terms, which now stands decided on 09.08.2003 along with a batch of 8 petitions, which reads thus:

> " By this order, I propose to dispose of nine writ petitions, as a common question of facts and law are involved in the same. For deciding these petitions, facts are taken from CWP No.1016 of 2003 for convenience.

The petitioners in the present petitions are widows/widowers and their wards have been given appointment on compassionate ground on the death of their spouses. They have prayed before this Court to direct the respondents not to recover the dearness allowance paid to them in excess. It is submitted that the amount paid to them ought not have been recovered as there was no fraud or any misrepresentation by the employee and have relied upon the judgement passed in **Sahib Ram Vs. State of Haryana** (1995(1) SCT 668) to submit that where there is no fraud or misrepresentation by the employee, the amount paid cannot be recovered. In **Union of India Vs. Rekha Majhi** (2000 (2) SCT 676 SC), the Apex Court held that the widow who is the alone bread earner of the family would not be in a position to pay back the excess amount which has already been drawn erroneously and considering the financial condition, the recovery of the excess pension paid to the said respondent was held to be unjustified on legal and equitable grounds. In **State of Punjab and others Vs. Rafiq Masih** (white washer) and others (2015) 4 SCC 334 ultimately the supreme Court examine the question whether the recovery can be effected to the amount which has erroneously been paid to the Government servant and reach to the following conclusion as stated herein below:

> 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 decision referred to herein above, we may, as a ready reference, summaries the following few situations, wherein recoveries by the employers, would be impermissible in law:
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> i. Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
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> ii. Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
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> 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.
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> iv. Recovery in cases where an employee has wrongly been required to discharge duties of higher post, and has been paid accordingly, even though he should have rightly been required to work against an inferior post.
>
> v. In any other case, where the Court arrives at the conclusion, that recovery if may be 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.

Having noticed the aforesaid judgment and considering the facts of the present case, where all the petitioners in the bunch of petition are commonly aggrieved of the action of the respondent in making recoveries from the pension paid to them for the dearness relief amount is found to be unjustified. The order dated 01.12.2001 and the order dated 14.05.2001 are accordingly quashed and set aside to the aforesaid extent of not making any recovery from the petitioners. In cases where there was interim order the same shall be treated as having become absolute in terms of the aforesaid conclusions and in cases where the recovery has already been affected, the same shall be refunded. The exercise of refunding the amount and payment of arrears shall be done within a period of three months. However, interest shall not be required to be paid.

The present petitions are accordingly allowed."

4. Learned State counsel despite best efforts being unable to controvert regards the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law, in view of which, the present petition is disposed of in terms thereof.

(AMAN CHAUDHARY)
JUDGE

05.04.2025
M.Kamra

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No