2025:PHHC:047421-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.8805 of 2025
Date of Decision: 07.04.2025

Bharat Sanchar Nigam Limited and others

…Petitioners

Versus

Jagjit Singh {Retd. Accounts (Regular)-Finance} and others

…Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Anish Babbar, Advocate,
for the petitioners.

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SANJEEV PRAKASH SHARMA J.(Oral)

The challenge in this writ petition is to the order dated 16.02.2024 (Annexure P-2) passed by the Central Administrative Tribunal, Chandigarh whereby the respondents (petitioners herein) were directed to refund the excess amount to the tune of Rs.1,96,953/- and Rs.1,43,275/- recovered/deducted from retrial benefits of applicants No.1 and 2 respectively.

2. Relying on the judgment passed by the Apex Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) etc. 2015(1) SCT 195***, learned counsel for the petitioners submits that the recovery was being made on account of re-fixation.

3. We find that the re-fixation was done after the retirement and the same was being made w.e.f. 01.01.2002. We notice that it is a settled law that recoveries cannot be effected from the family pension or pension or

retiral benefits granted to a pensioner after judgment passed by the Hon'ble Supreme Court in the case of ***Chandi Prasad Uniyal & Others Vs. State of Uttaranchal****; (2012) 8 SCC 417* which was examined by the Supreme Court afresh in ***State of Punjab & Others*** Vs. ***Rafiq Masih (White Washer)***; *2015 (1) SCT 195* and ***Thomas Daniel*** *Vs.* ***State of Kerala & Others;*** *2022 INSC 498* which has already been noticed by the Central Administrative Tribunal, Chandigarh. The Supreme Court has reiterated now the same view in SLP No. 5918 of 24 titled as ***Jogeshwar Sahu*** Vs. ***District Judge, Cuttack***; *2025 INSC 449* wherein after noticing the judgment in the case of Rafiq Masih and this Court has observed as under:- Para 11 and 12

> *"11. In Col. B.J. Akkara (Retd.) v. Government of India this Court considered an identical question as under:*
>
> *"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/ understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):*
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> *(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.*
>
> *(b) Such excess payment was made by the employer by applying a wrong principle for*

calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of *the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."*

12. In ***Syed Abdul Qadir v. State of Bihar*** *excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalized Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:*

> *"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials*

> *concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."*

4. We also take note of the fact that similar view has been taken by the Supreme Court in ***High Court of Punjab and Haryana and others vs. Jagdev Singh, 2016(4) SCC 267.***

5. Without going into the question relating to the aspect whether even revised pay fixation could be done after retirement without giving an opportunity to hearing, we find that we need not to interfere with the order passed by the CAT. Accordingly, the instant petition is dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

April 07, 2025 **(MEENAKSHI I. MEHTA)**
seema **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*