



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

CWP-10108-2020

Jarnail Singh

....Petitioner

Versus

Haryana State Agricultural Marketing Board and another

...Respondents

Reserved on: 13.11.2025

Pronounced on: 10.12.2025

Uploaded on: 10.12.2025

Whether only the operative part of the judgment is pronounced?

No

Whether full judgment is pronounced?

Yes

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Malik, Advocate
for the petitioners.

Mr. S.K. Saini, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the show cause notice dated 23.10.2019 (Annexure P-8) and the impugned order dated 17.06.2020 (Annexure P-10), whereby the benefit of the 1st Assured Career Progression (ACP) scale granted to the petitioner in 2001 has been withdrawn, and for a consequential direction to the respondents not to recover any excess amount paid on that account.

Brief Facts

2. Briefly the facts of the case is that the petitioner was appointed as a Peon on 06.08.1979 and was promoted to the post of Auction Recorder on



06.05.1991 in the pay scale of Rs.950-1500. Under the Haryana Civil Services (ACP) Rules, 1998, he was granted the 1st ACP scale of Rs.4000-6000 w.e.f. 01.06.2001 vide order dated 28.01.2008. The petitioner retired on 30.09.2017, and his pension and other retiral benefits were fixed and released accordingly. Subsequently, the respondents issued a show cause notice dated 23.10.2019 alleging that the grant of the 1st ACP scale was inadvertent and contrary to Rule 5(1) of the HCS (ACP) Rules, 1998, as the petitioner, having been promoted prior to 31.12.1995, was not eligible for the ACP benefit. After considering the petitioner's reply and affording a personal hearing, the respondents passed the impugned order dated 17.06.2020 withdrawing the ACP scale and directing recovery of the excess amount paid.

Contentions

3. Learned counsel for the petitioner *inter alia* contends that the petitioner joined as Peon on 06.08.1979 and was promoted as Auction Recorder on 06.05.1991. Under the Haryana Civil Services (ACP) Rules, 1998, he was granted the 1st ACP scale of Rs.4000-6000 w.e.f. 01.06.2001 vide order dated 28.01.2008. He retired on 30.09.2017 after rendering unblemished service and all retiral benefits were duly released. He submits that the impugned show cause notice and the subsequent order withdrawing the ACP scale and ordering recovery were issued without any allegation of misrepresentation, fraud or concealment on the part of the petitioner. Relying on the judgment rendered by the Hon'ble Supreme Court in ***State of Punjab vs. Rafiq Masih (2015) 4 SCC 334*** and ***Thomas Daniel vs. State of Kerala 2022 INSC 498***, and by this Court in ***B.P. Sharma vs. UHBVN (2022(4) SCT 388)***, he submits that recovery from a retired employee is impermissible. He further contends that the action is



vitiated by inordinate delay, as the ACP was granted in 2001 and sought to be withdrawn in 2020. The show cause notice was served 18 years after the grant of ACP.

4. *Per contra*, learned counsel for the respondents submits that the grant of the 1st ACP scale to the petitioner was inadvertent and contrary to Rule 5(1) of the HCS (ACP) Rules, 1998, as the petitioner, having been promoted prior to 31.12.1995, was not eligible. He submits that the withdrawal was effected after following due procedure, including issuance of show cause notice and affording personal hearing, during which the petitioner gave no objection. He further submits that the excess payment made by the respondents being public money is liable to be recovered.

Observation & Analysis

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance it transpires that the petitioner retired on 30.09.2017. The show cause notice was issued on 23.10.2019 and the impugned order was passed on 17.06.2020, i.e., after retirement. It is not in dispute that there is no allegation of misrepresentation, fraud or concealment on the part of the petitioner. The respondents admit that ACP was granted to the petitioner inadvertently, contrary to the provisions of HCS (ACP) Rules 1998.

6. The issue of whether recovery of an excess amount paid to an employee, in the absence of any misrepresentation or fraud on the part of the employee, can be effected post-retirement, is no longer *res-integra*.

7. A Three Judge Bench of the Hon'ble Supreme Court in ***Shyam Babu Verma v. Union of India, (1994) 2 SCC 521*** while speaking through Justice N.P Singh observed that,



*“11. Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1.1.1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560, but as they have received the scale of Rs. 330-560 since 1973, due to no fault of theirs, and that scale is being reduced in the year 1984 with effect from 1.1.1973, it should only be just and proper not to recover any excess amount which has already been paid to them. **Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners, due to the fault of the respondents, the petitioners being in no way responsible for the same.**”*

8. In *Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475*, a Three Judge Bench of the Hon’ble Supreme Court while speaking through Justice B.N. Agrawal observed that,

*"27. This Court, in a catena of decisions, has **granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if 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.** The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib*

Ram v. State of Haryana, 1995(1) SCT 668 : 1995 Supp. (1) SCC 18, Shyam Babu Verma v. Union of India, 1994(2) SCT 296 : [1994]2 SCC 521; Union of India v. M. Bhaskar, 1996(4) SCT 57 : [1996]4 SCC 416; V. Ganga Ram v. Regional Jt., Director, 1997(3) SCT 72 : [1997]6 SCC 139; Col. B.J. Akkara [Retd.] v. Government of India & Ors., (2006) 11 SCC 709; Purshottam Lal Das & Ors. v. State of Bihar, 2006(4) SCT 537 : [2006]11 SCC 492; Punjab National Bank & Ors. v. Manjeet Singh & Anr., 2006(4) SCT 570 : [2006]8 SCC 647 and Bihar State Electricity Board & Anr. v. Bijay Bahadur & Anr., [2000] 10 SCC 99.

28. Undoubtedly, the excess amount that has been paid to the appellants – 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 bonafide 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 appellants-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 appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.**"

9. A Two Judge Bench of the Hon'ble Supreme Court in ***Yogeshwar Prasad v. National Institute of Education Planning and Administration, (2010) 14 SCC 323***, while speaking through Justice Dalveer Bhandari made the following observation,

"39. In view of a series of judgments of this Court, the appellants are otherwise entitled to the revised pay scale. **The amount paid to the appellants-employees pursuant to the grant of higher pay scale should not be recovered unless it was a case of mis-representation or fraud.**"

10. Further a Two Judge Bench of the Hon'ble Apex Court in ***State of Bihar & Ors. v. Pandey Jagdishwar Prasad, 2009(2) S.C.T. 161 : 2009(2) R.A.J. 388 : (2009) 3 SCC***, while speaking through Justice Tarun Chatterjee observed that,

"10.....It is not needed for this Court to verify the veracity of the statements made by the parties. If at all the respondent entered the second date of birth at a subsequent period of time, the authorities concerned should have detected it and there should have been a detailed enquiry to determine whether the respondent was responsible for the same. It has been held in a catena of judicial pronouncements that **even**



if by mistake, higher pay scale was given to the employee, without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary benefit available to the employee....."

11. Reliance in this regard may also be placed on judgments rendered by the Hon'ble Apex Court in *Thomas Daniel(supra)* and *State of Bihar & Ors. v. Pandey Jagdishwar Prasad, 2009(2) S.C.T. 161 : 2009(2) R.A.J. 388 : (2009) 3 SCC* and by this court in *Sukhvir Singh Dalal Managing Director DHBVN and others CWP 9641 - 2018*.

12. The plea of the respondents that the petitioner gave "no objection" during personal hearing is inconsequential. Such a statement cannot override the settled legal protection against recovery from retired employees, especially when no fraud or misrepresentation is alleged.

13. It has been crystallized that where the excess payment arose from no fault, misrepresentation or fraud on the part of the employee, but was instead the result of an inadvertent error, wrong interpretation or miscalculation by the employer recovery post retirement is impermissible.

Conclusion

14. In view of the above, the impugned order dated 17.06.2020(Annexure P-10) withdrawing the ACP scale and authorizing recovery along with the show cause notice dated 23.10.2019 (Annexure P-8) is found to be unsustainable in law.

15. Consequently, the present writ petition is allowed. The show cause notice dated 23.10.2019 (Annexure P-8) and the impugned order dated 17.06.2020 (Annexure P-10) are hereby quashed. The respondents are directed not to recover any amount already paid to the petitioner on account of the 1st ACP scale. Any recovery already effected shall be refunded to the petitioner



within three months from the date of receipt of a certified copy of this order.

- 16. Pending miscellaneous applications, if any, stand disposed of.
- 17. No order as to costs.

(HARPREET SINGH BRAR)
JUDGE

10.12.2025
Neha

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