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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-6202-2006 (O&M)

Date of decision : 20.01.2025

S. S. DHALIWAL & ANR.

..... Petitioners

VERSUS

STATE OF PUNJAB & ORS.

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present :- None for the petitioners.

Ms. Akshita Chauhan, DAG, Punjab.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the order dated 17.03.2005 (Annexure P-9) by which, the pay of the petitioners was refixed, reduced and the recovery from the petitioners was ordered in pursuance of the said re-fixation
2. The present petition is pending for the last about 19 years. No one has appeared on behalf of the petitioners to press the present petition.
3. On being asked, learned State counsel submits that as per the impugned order dated 17.03.2005 (Annexure P-9), the recovery is also to be done from the petitioners.
4. Though, the petitioners are not appearing but, the question that



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whether recovery can be done from the petitioners after refixing their salary, needs to be decided. As per the judgment of Hon'ble the Supreme Court of India in ***Civil Appeal No.11527 of 2014 titled 'State of Punjab and others Vs. Rafiq Masih (White Washer) etc.'***, 2015(1) S.C.T., 195, any benefit which has been given to the retired employees for more than 5 years, the recovery can not be done.

5. In the present petition, the recovery was sought to be done on the basis of the notification of the Government of Punjab dated 16.01.1998 (Annexure P-1) on the ground that the same has wrongly been implemented qua the petitioners. The actual order regarding refixation of salary were passed on 09.07.2003 (Annexure P-8) hence, a period of more than 05 years had elapsed and as per the judgment in **Rafiq Masih** (supra), any benefit given to an employee under a mistake for a period of more than 5 years, the excess payment cannot be recovered. The relevant paragraph of the judgment of Hon'ble the Supreme Court of India in **Rafiq Masih** (supra) is as under:-

“12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

- (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*



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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."

6. Even otherwise, the Hon'ble Supreme Court of India in **Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022**, has held that where there was no fraud made by an employee to seek excess payment then his/her entitlement, the recovery cannot be made. The relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or 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, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

7. Keeping in view the above, it is directed that even after



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refixation of the salary of the petitioners, in case any payment is found to be paid in excess of the entitlement of the petitioners, the same will not be recovered. In case any amount has been recovered, the same be refunded back to the petitioners within a period of 08 weeks of the receipt of copy of this order.

8. The present petition is allowed.

(HARSIMRAN SINGH SETHI)
JUDGE

20.01.2025
Rimpal

Whether speaking/reasoned	Yes
Whether Reportable :	No