



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

230

CWP-11078-2017

Date of decision: 13.01.2025

Mona Rani

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. S.K. Rattan, Advocate
for the petitioner.

Mr. Arun Gupta, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for quashing the impugned refixation of pay and recovery, whereby the pay of the petitioner has been reduced and refixed and an amount of Rs.65926/- has been recovered without affording any opportunity of hearing.

2. The petitioner was appointed as ETT teacher in handicap category having 60% disability (ortho having suffered from polio) vide order dated 26.11.2001. He was granted 4 years proficiency step up w.e.f. 01.11.2006 as mentioned in his service book based on instructions dated 03.11.2006 and getting the pay continuously till August 2014, which was vide impugned order reduced. Reliance is placed on the judgment passed in the case of similarly situated employees whereby two writ petitions with a lead CWP No.11328-2015, **Gurmit Singh and others vs. State of Punjab and others**, were allowed on 14.05.2019, which has been upheld by the



Division Bench in LPA-718-2021 and LPA-703-2020, which learned State counsel has not been able to controvert regards factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law, the relevant paras of the judgment in **Gurmeet Singh** (supra) read thus:-

“The only point for determination is whether the recovery of the amount paid on account of the revision of pay which subsequently was found to be wrongly granted could be recovered. The recovery cannot be made from the petitioners as they are the Class III employees and their case is squarely covered by the judgment passed in 'State of Punjab and others Vs. Rafiq Masih etc.' (supra).

So far as the undertakings given by the petitioners are concerned, this Court feels that the effect of benefit which has been given in Rafiq Masih's case to the petitioners, cannot be taken away by the undertaking given by the petitioners. Such an undertaking is bad and against the public policy.

Accordingly, the present petitions are allowed and the impugned orders dated 09.03.2015 (Annexures P-3 to P-6) to the extent of effecting recovery, are hereby set aside.”

3. The relevant paras of the aforementioned judgment in LPA-718-2021 read thus:-

“We have gone through the paper book and are of the considered opinion that though the Apex Court has noticed the earlier judgment passed in Rafiq Masih case (supra), upon which learned Single Judge has relied upon, but while noticing the fact that the benefit had been given on 07.05.2003 and the same was sought to be recovered on 18.02.2004 in terms of the undertaking given on account of revision which had been effected. It was then noticed that on account of the undertaking given, the Officer was bound by the same while opting for the revised pay scale while taking the said view.

In the present case, the facts are slightly different to the extent that it would be clear that the benefit of revision was given w.e.f. 01.01.2006 vide notification dated 27.05.2009. The learned Single Judge noticed that the benefit was granted as per order dated 01.12.2007 as per the entry made in the service book. Thus, it is apparent that from 2007 onwards till 09.03.2015, no steps were taken to revise the pay. In such circumstances, we are of the considered opinion that the case would fall under Clause (iii) of Para No. 12 of the judgment in Rafiq Masih (supra) where recovery from employees cannot be made when excess



payment has been made for a period in excess of 5 years before the order of recovery was issued. The said clauses read thus:-

“(i) Recovery from employees belonging to ClassIII 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.”

Similarly, the benefit would also be granted to the writ petitioners who are working as ETT Teachers and who also belong to Class III and thus would also be covered under Clause (i) whereas in Jagdev Singh's case (supra), the employee was a judicial officer.

In such circumstances, we are of the considered opinion that the judgment relied upon by the State in Jagdev Singh's case (supra) is distinguishable and not applicable to the facts and circumstances of the present cases. Resultantly, we find no merit in the present appeals and the same are dismissed.”

4. In view of the above, the present petition is disposed of in terms of **Gurmeet Singh** (supra).

(AMAN CHAUDHARY)
JUDGE

13.01.2025
Hemant

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