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

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CWP-20633 of 2021 (O&M)
Date of Decision:16.05.2025

Jita

....Petitioner

Versus

The Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

Present: Mr. J. S. Jaidka, Advocate,
for the petitioner.

Mr. Kannan Malik, Advocate,
for the respondents.

DEEPINDER SINGH NALWA, J. (Oral)

1. In the present petition, the petitioner has challenged the calculation sheet (Annexure P-1) whereby, the respondents have calculated the recovery to be effected from the gratuity of the petitioner.

2. The brief facts of the case are that the petitioner was appointed as a Peon in the Punjab State Power Corporation Limited (for short the Corporation) and he retired from the Corporation on 31.03.2013. While releasing gratuity to the petitioner, an amount of Rs.1,54,060/- was recovered as excess amount paid to the petitioner on account of refixation of his pay.

3. Aggrieved against the abovesaid recovery of amount from the gratuity, the petitioner has filed Civil Writ Petition No.5422 of 2020 and the

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said writ petition was dismissed as withdrawn on 28.02.2020, with liberty to file fresh one on the same cause of action with better particulars. Thereafter, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner contends that since there was no misrepresentation or fraud committed by the petitioner, therefore, recovery of an amount of Rs.1,54,060/- could not have been effected from the gratuity of the petitioner and the same be liable to be refunded to him and in support of his contention, he relies upon a judgment of the Hon'ble Supreme Court in **State of Punjab and others versus Rafiq Masih (White Washer) and others 2015(1) SCT 195.**

5. *Per contra*, learned counsel for the respondents submits that while revising the pay scale in the year 1996, the pay of the petitioner was wrongly refixed and as such, he was paid higher pay than his entitlement. On account of said wrong refixation of pay, excess amount of Rs. 1,54,060/- was due from the petitioner during his service and as such, the abovesaid recovery of Rs. 1,54,060/- from the gratuity of the petitioner has rightly been effected. He further submits that in light of the undertakings (Annexure R-1/3 and R-1/4) furnished by the petitioner, the abovesaid recovery was permissible in law. He relies upon a judgment of the Hon'ble Supreme Court in **High Court of Punjab and Haryana and others versus Jagdev Singh 2016 (14) SCC 267.**

6. I have heard learned counsel for the parties and perused the records available on case file.

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7. Admittedly, the petitioner retired from service on attaining the age of superannuation on 31.03.2013 and while releasing the amount of gratuity to the petitioner, an amount of Rs. 1,54,060/- was adjusted and recovered on account of excess payment made to the petitioner. The abovesaid action of the respondents was totally contray to the law laid down by the Hon'ble Supreme Court in **Rafiq Masih's** case (supra) particularly in view of the fact that the petitioner has retired from the post of Peon, which is Class-IV post. The relevant extract of the aforesaid judgment of **Rafiq Masih's** case is reproduced as under:-

“18. 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 employees, 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 the 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.

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(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.”

8. A perusal of the facts of the present case would show that in fact it is not a case of the respondents that due to some fraud, misrepresentation or concealment of facts by the petitioner, the pay was wrongly fixed or higher pay was given to the petitioner. In fact, the above said higher pay was given to the petitioner by the respondents on their own. It is also an admitted fact that before effecting the recovery from the petitioner, no show cause notice was given to him.

9. So far as the argument raised by learned counsel for the respondents that the petitioner had furnished two undertakings (Annexure R-1/3 and R-1/4) and recovery is permissible in law is concerned, the same is also not sustainable in view of the fact that one of the undertaking (Annexure R-1/3) pertains to the year 2006 and is a general undertaking and is not specific undertaking with regard to grant of pay on re-fixation of the pay scale in the year 1996. Second undertaking (Annexure R-1/4) dated 17.01.2022 also does not deal with grant of pay given to the petitioner in the year 1996. Therefore, furnishing the abovesaid undertakings would not be of any benefit to the respondents Corporation. In **Jagdev Singh's** case (*supra*), the Hon'ble Supreme Court was dealing with Class-I employee. In the abovesaid case, there was a specific rule which stipulates that in case there has to be some

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recovery, the employee will have no objection with regard to the same and in this way, the employee was already put to the notice with regard to the specific benefit which was to be conferred upon the employee. However, in the present case, no such kind of notice was put to the petitioner. Therefore, the facts and circumstances of the present case are totally distinguishable from the facts and circumstances of the judgment passed in *Jagdev Singh's* case (*supra*) and therefore would not be applicable in the present case.

10. In view of the above, the present petition is allowed and the impugned calculation sheet (Annexure P-1) is quashed. The respondents are directed to refund the amount of Rs.1,54,060/- to the petitioner, which was wrongly adjusted and recovered from the gratuity of the petitioner, within a period of 6 weeks from the date of receipt of the certified copy of this order, alongwith interest @ 6% per annum from the date of recovery till the date of actual realization of payment.

(DEEPINDER SINGH NALWA)
JUDGE

May 16, 2025
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No