



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-19711-2024 (O&M)

Pawan Kumar and others

... Petitioners

Vs.

Uttar Haryana Bijli Vitran Nigam Limited 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. R.K. Malik, Senior Advocate with
 Mr. Ankur Sheoran, Advocate
 for the petitioners.

 Mr. D.S. Patwalia, Senior Advocate with
 Mr. A.S. Chadha, Advocate
 for the respondents.

HARPREET SINGH BRAR, J.

1. 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* seeking quashing of the order dated 06.08.2024 (Annexure P-12), vide which, while directing to refix/disburse the pay/pension w.e.f. 01.09.2015 by withdrawing the benefit of notional pay extended to the employees/retirees



from the date of their actual promotion as Senior Accountants, recovery of excess amount paid to them was ordered. Further, to quash the decision taken by the Board of Directors on 29.07.2024, vide which the benefit of pay scale notionally fixed w.e.f. 01.01.2006 and actually granted w.e.f. 01.09.2015 was ordered to be withdrawn. A further prayer is made for a declaration to the effect that the petitioners were rightly granted the benefit of pay scale prior to 01.09.2015 and actually w.e.f. 01.09.2015 and the respondents do not have the jurisdiction to reduce the same or effect recovery after about 10 years.

FACTUAL BACKGROUND

2. On 27.11.2009, the Board of Directors of the respondent-Nigam approved the decision to equate the pre-revised pay scales of Deputy General Manager, General Manager, Chief General Manager in the Finance and Accounts cadre with that of Executive Engineer (XEN), Superintending Engineer and Chief Engineer, respectively, w.e.f. 01.01.2006. It was further decided that the revised pay scale and time scale may be allowed to the officers of the said cadre upto 01.01.2006 on notional basis and thereafter, in cash. Initially, a condition was imposed in this regard i.e. approval from the Haryana Bureau of Public Enterprise (for short 'HBPE') was made necessary. However, HBPE did not approve the case of some of the petitioners, which resulted into filing of **CWP-9262-2012** before this Court, whereby this condition was challenged and by holding that the HBPE has no role to play, the said writ petition was allowed vide judgment dated 12.09.2013 (Annexure P-2).



However, the Board of Directors was given the liberty to implement the decision regarding revision of pay scales from a date it deems appropriate. The respondent-Nigam preferred an appeal by way of filing LPA-383-2014, which was dismissed on 18.02.2015 (Annexure P-3), followed by dismissal of Special Leave to Appeal (C) No.21263 of 2015 filed against the same, vide order dated 14.08.2015 (Annexure P-4).

3. Thereafter, vide order dated 31.08.2015 (Annexure P-5), the decision of the Board dated 27.11.2009 was implemented w.e.f. 01.09.2015. The pay of all the petitioners was fixed notionally upto 31.08.2015 and payment in actual cash was made w.e.f. 01.09.2015. However, the Chief General Manager, with the approval of Managing Director, decided to withdraw the benefit of notional fixation of the pay of the petitioners prior to 01.09.2015 and reduced the pay/pension of the petitioners and further directed to effect recovery of the excess amount disbursed to them.

CONTENTIONS

4. Learned senior counsel for the petitioners, *inter alia*, contended that undisputedly, the Board of Directors took a decision on 27.11.2009 to fix the pay of the petitioner notionally upto 01.01.2006 and thereafter, actual cash be paid. Subsequently, on 31.08.2015, the Board took a decision that actual cash be paid w.e.f. 01.09.2015 instead. Since the pay of the petitioners was notionally fixed prior to 01.09.2015, they were receiving benefits accordingly. Thus, the impugned order dated 06.08.2024 (Annexure P-12), whereby these



benefits were withdrawn and recovery was ordered, is untenable, as the earlier decision in this regard was never withdrawn. Further, the audit report of the Principal Accountant General (Audit), Haryana obtained by the respondent-Nigam clearly indicates that the pay scale was correctly fixed in line with the decisions taken by the Board on 27.11.2009 and 24.07.2015. However, this report was not taken into consideration before passing the impugned order (Annexure P-12). Learned senior counsel further contended that the Hon'ble Supreme Court in *Thomas Daniel Vs. State of Kerala and others, 2022 AIR SC 2153* has settled the controversy by holding that if the excess payment has been made by the employer, the same cannot be recovered from the employee, if there has been no misrepresentation or fraud on part of the latter. Moreover, in view of the judgment rendered by the Hon'ble Supreme Court in *State of Punjab Vs. Rafiq Masih, 2015(1) SCT 195* and the instructions dated 20.01.2017 (Annexure P-13), duly approved by the Whole Time Directors vide order dated 07.06.2018, no recovery can be effected from retired employees, when the said excess payment was made over five years ago. Notably, petitioners No.1 to 7 are already retired while Deepak Jain and Harshvardhan have already passed away. Additionally, all the petitioners had received the relevant benefits w.e.f. 01.09.2015, thus, over five years have passed and no recovery can be effected at this stage. Lastly, the Board of Directors had duly approved the decision to grant the said notional and actual benefits to the petitioners, as discernible from the decisions dated 27.11.2009/04.12.2009

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(Annexure P-1) and 31.08.2015 (Annexure P-5). Now, in its meeting held on 29.07.2024, the Board has changed its earlier decision, even though it was passed by the competent authority. The right accrued to the petitioners by virtue of a decision taken by a competent authority cannot be taken away retrospectively, after efflux of over 15 years.

5. *Per contra*, learned senior counsel for the respondents argued that the petitioners were promoted to the post of Senior Accounts Officer w.e.f. the year 2002. As a matter of fact, the petitioners have taken undue advantage of their position and fixed their own pay arbitrarily, causing a huge financial loss to the respondent-Nigam. While the benefits of the revision of pay scales had to be granted w.e.f. 01.09.2015, the petitioners granted themselves benefits of the same w.e.f. the date of their promotion, which is prior in time. A copy of one such order is available on record as Annexure R-1. Since the excess amount was paid to the petitioners by playing fraud on the respondent-Corporation, they cannot seek shelter of **Thomas Daniel's** case (*supra*) or **Rafiq Masih's** case (*supra*). Learned senior counsel emphasized that the files regarding revamping of finance accounts, audit wing and the notings with respect to fixation of pay of Senior Accounts Officers were declared 'misplaced' by the officers of the department of the petitioners. These files contained detailed notings, orders, letters with respect to the benefits of revision of pay scales granted to Senior Accounts Officers in the year 2015, in pursuance of the decision of the Board. The instance of fraud becomes rather



self-evident by the fact that the petitioners, at that point of time, were at the helm of the accounts department, with complete control over these files. In order to cover his tracks, the Financial Advisor of the concerned department addressed a letter (Annexure R-3) to his own office and also wrote a letter (Annexure R-4) to the police authorities to file a complaint with respect to missing files. Further, Rachna Garg, Senior Accounts Officer vide letter dated 12.03.2021 (Annexure R-6) wrote to the Superintendent of Police that no single person can be held responsible for the files being misplaced. She herself is a beneficiary of grant of revised pay scales retrospectively, who has also been served identical notices and recovery orders, however, she has not approached this Court against them.

OBSERVATIONS AND ANALYSIS

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that on 27.11.2009, the Board of Directors of the respondent-Nigam approved the decision to equate the pre-revised pay scales of DGM, GM, CGM in the Finance and Accounts cadre with that of XEN, SE and CE, respectively, w.e.f. 01.01.2006. However, the same was never expressly implemented, as application of the said decision was made subject to approval of the HBPE. This condition was challenged by some petitioners in **CWP-9262-2012** before this Court, which was eventually set aside vide judgment dated 12.09.2013 (Annexure P-2). Further, this Court granted the liberty to the Board of Directors to decide the

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date of implementation for the revised pay scale. The relevant part is reproduced below:

*“In view of the above said circumstances, present writ petition is allowed and the order Annexure P-8 dated 2.12.2012 declining the proposal of the Board of Directors by the Standing Committee of Bureau of Public Enterprises communicated through the Superintendent Power for Financial Commissioner and Principal Secretary to the Government of Haryana, Power Department, is hereby set aside. It will be open to the petitioners to seek implementation of the order of the Board of Directors and consequential reliefs in accordance with law as the financial burden is to be borne by none else by the Corporation itself. **It is left open to the Board of Directors to implement its decision with effect from any date decided by the Board.**”*

(emphasis added)

7. Thus, even at this stage, the decision dated 27.11.2009, seeking to implement the revised pay scales w.e.f. 01.01.2006, was not formally implemented. Subsequent to dismissal of LPA by this Court and SLP by the Hon’ble Supreme Court, the respondent-Corporation, vide order dated 31.08.2015 (Annexure P-5), decided to grant the said benefits w.e.f. 01.09.2015.

8. Curiously, a perusal of the record, particularly Annexure R-1, wherein disbursement of the pay of one S.B. Gupta is detailed, reflects that notional benefits of revised pay scale were granted w.e.f. the date of his promotion as Senior Accounts Officer i.e. 25.10.2007. These benefits have also been granted to the petitioners in the same way. It appears that the petitioners have repackaged a proposal (dated 27.11.2009) in form of an approval to

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unjustly claim benefits of the same by misusing their position as officers of the finance and accounts department, in-charge of processing any changes in salary structures of the employees of the respondent-Nigam.

9. Further still, the official records pertaining to grant of benefits of revised pay scale to the Senior Accounts Officers were found to have been 'misplaced.' When a complaint was filed in this regard, the concerned officer i.e. Rachna Garg, Senior Accounts Officer, vide memo dated 12.03.2021 (Annexure R-6), informed the Superintendent of Police that liability could not be fastened upon single employee. Notably, Rachna Garg herself has availed benefits of the revision of pay. A perusal of noting sheet (Annexure R-8) would indicate that the Board has made the following observations:

“From the pre-page & above, it can be seen that the office of FA/HQrs, UHBVNL, Panchkula has misplaced his original noting titled as Revamping of Finance, Accounts & Audit wing. On the other hand the office of Chief Accounts Officer, UHBVNL, Panchkula has also misplaced his original file along with all relevant documents/annexures wherein the approval has been obtained to grant benefit of notional pay fixation prior to 01.09.2015 to all Accounts Personnels.”

10. Be that as it may, this Court does not find it relevant to comment on the veracity of criminal proceedings initiated in this regard. As far as the act of the petitioners in granting themselves notional benefits w.e.f. 01.01.2006 is concerned, it must be noted that they are specialized officers in the department of finance and accounts. Thus, they cannot present themselves as innocent while interpreting the resolutions passed by the Board in terms of the judgment



rendered by this Court. By virtue of their position and specialized skills, it can be reasonably expected of them to understand that the initial decision was never implemented, thereby making their act and conduct fraudulent.

11. A two Judge Bench of the Hon'ble Supreme Court in ***Thomas Daniel's*** case (*supra*) has unequivocally held that the right to recovery is rooted in equity. Therefore, it is necessary that the excess amount was not disbursed to the beneficiary on account of any fraud on his part or misrepresentation made by him. Speaking through Justice S. Abdul Nazeer, the following was opined:

*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.***

*10. In ***Sahib Ram v. State of Haryana and Others, 1995 Supp (1) SCC 18*** this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong*

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construction of relevant order by the authority concerned, without any misrepresentation on part of the employees. It was held thus :

"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

11. In *Col. B.J. Akkara (Retd.) v. Government of India and Others*, (2006) 11 SCC 709 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 7-61999. 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]):*

(a) The excess payment was not made on account of any

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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

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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 and Others v. State of Bihar and Others, (2009) 3 SCC 475 excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised 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

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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.”

12. Since the petitioners cannot claim lack of knowledge with regards to application of revised pay scales and were in a position of authority to pass requisite orders, bequeathing such benefits upon themselves, this Court is of the considered opinion that the present case is indicative of fraud. At this juncture, it would be profitable to refer to the legal maxims- *nullus commodum capere potest de injuria sua propria*, which can be translated to - no man can take advantage of his own wrong, and *sublato fundamento cadit opus*, which translates to - when the foundation is removed, the structure falls. In that vein, the petitioners cannot be allowed to be illegitimately benefited from their own wrong merely because the charade was discovered later in time, as fraud vitiates all. A two-Judge Bench of the Hon’ble Supreme Court in ***Ram Chandra Singh Vs. Savitri Devi and others, (2003) 8 SCC 319***, speaking through Justice S.B.Sinha, wherein the following was opined:

“15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.



17. *It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.*

18. *A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.*

(emphasis added)

CONCLUSION

13. In view of the discussion above, present petition is dismissed. The petitioners cannot be protected by this Court against the consequences of their intentional wrongdoings.

14. The pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

10.12.2025
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No