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

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Date of Decision :18.02.2025

Thuru Ram

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Shazia K. Singh, Advocate for the petitioner.

Mr. T.P.S. Chawla, Senior DAG, Punjab.

Mr. Rajiv Joshi, Advocate for respondent No.2.

* * *

Harsimran Singh Sethi, J. (Oral)

1. Reply filed on behalf of respondents No. 1 & 3 filed in the Court today is taken on record.

2. In the present petition, grievance being raised by the petitioner is that vide impugned orders dated 15.02.2023 and 08.08.2023 (Annexures P/2 & P/4), the recovery is being done from the pension of the petitioner and that too after his retirement by revising the pension of the petitioner with retrospective effect, which action on the part of the respondents is arbitrary and illegal and is contrary to the settled principle of law hence, the recovery as being done from the petitioner may kindly be set aside keeping in view the settled principle of law settled by the Hon'ble Supreme Court of



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India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195**, on the basis of which, the Instruction dated 28.08.2015 (Annexure P/6) were also issued by the respondent-State.

3. Upon notice of motion, the respondents have filed reply, wherein, it has been stated that the petitioner retired from service in the year 2005 but keeping in view the fact that certain discrepancies had occurred while fixing the pension of the petitioner due to which the petitioner was granted higher pension instead of the entitled one, which mistake has been rectified by the department now and as the petitioner has got more pension than his entitlement, the same is being recovered from him.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. It is a conceded position that the petitioner retired from service on attaining the age of superannuation in the year 2005 from Class-III post and after a period of 17 years, the pension of the petitioner is being revised on the ground that the same was wrongly fixed keeping in view the revised pay rules which have come into being w.e.f. 01.01.2006 and thereafter, w.e.f. 01.01.2016 so as to effect recovery of excess amount paid.

6. It may be noticed that the petitioner has no role to play in fixing of his pension as the respondents themselves fixed the pension of the petitioner, which was being disbursed to the petitioner. That being so, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **Thomas Daniel vs. State of Kerala and others, 2022 (2) SCT 722**, no recovery of the excess amount paid to an employee can be



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done especially when, there was no misrepresentation on the part of the employee concerned. 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. Further, as per the judgment in **Rafiq Masih (supra)**, no recovery can be done from a retired employee with regard to the benefit which was extended to the employee concerned for a period of five years. Relevant paragraph of the judgment 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 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."

8. In the present case, the claim of the petitioner is squarely covered by the settled principles of law as cited hereinbefore as the petitioner has already retired from service in the year 2005 and pension was revised after 17 years, which also shows that the said pension was given to the petitioner for a period of 17 years hence, it is directed that no recovery of any excess amount paid to the petitioner, will be done from the pension

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of the petitioner and recovery, if any, already done from the petitioner be refunded back to him within a period of 08 weeks from the date of receipt of copy of this order.

9. Present petition stands allowed in above terms.

February 18, 2025*aarti***(HARSIMRAN SINGH SETHI)
JUDGE***Whether speaking/reasoned : Yes**Whether reportable : No*