



CWP-24062-2023

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

(205)

CWP-24062-2023

Date of Decision : February 13, 2025

Baljinder Singh Bassi**.. Petitioner****Versus****State of Punjab and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. S.S. Swaich, Advocate, with
Ms. Ishani Goyal, Advocate,
Ms. Deepika, Advocate and
Ms. Navjot Kaur, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the prayer of the petitioner is that the orders dated 20.06.2023 (Annexure P-11), 12.04.2023 (Annexure P-12) and 20.03.2023 (Annexure P-13) which have been passed by the respondents for the recovery of the excess payment made for the period starting from December 2008 to February 2023 after withdrawing the benefit of proficiency step up and the higher pay scale on rendering 8 years proficiency step up and 10 years of progression scale, is arbitrary and illegal and contrary to the judgment of the Hon'ble Supreme Court of India in *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195.*



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2. Learned counsel for the petitioner submits that once there was no misrepresentation on part of the petitioner and the pay was fixed by the respondents themselves granting certain benefits, withdrawal of the same after a period of 15 years is not permissible hence, the claim of the respondents with regard to the recovery of the excess amount paid to the petitioner is liable to be set aside.

3. Learned counsel for the respondents submits that inadvertently certain benefits were given to the petitioner without noticing the fact that the petitioner availed extra ordinary leave, which period was to be excluded for grant certain benefits of proficiency step up after completion of 8 years of service and progression scale after 10 years of service, which benefit has been withdrawn now and any excess amount paid to the petitioner beyond his entitlement, can be recovered, hence, the prayer of the petitioner for setting aside the recovery orders may kindly be dismissed.

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

5. The question as to under what circumstances the recovery of the excess amount cannot be done, has been settled by the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)***. The relevant paragraph of the said 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.”*

6. A bare perusal of the above reproduction would show that in case an employee has been granted particular benefit for a period of more than five years before the same was sought to be withdrawn, excess amount paid, cannot be recovered.

7. Learned counsel for the respondents has not been able to dispute that in the present case, the pay fixation was done in the year 2008 and the petitioner continued to get the benefit till the year 2023 hence, the petitioner was getting the benefit for more than 5 years which was later on withdrawn and on the basis of which the excess amount paid is sought to be recovered.

8. Even otherwise, as per the judgment of 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***, any amount paid



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in excess to an employee where there is no misrepresentation and the employee was not involved in getting the higher emoluments than the entitlement, the recovery cannot be done. 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.”

9. Learned counsel for the respondents has not been able to rebut the said settled principle of law noticed hereinbefore which goes in the favour of the petitioner with regard to the recovery of the excess amount paid to the petitioner.

10. Keeping in view the above, the orders dated 20.06.2023 (Annexure P-11), 12.04.2023 (Annexure P-12) and 20.03.2023 (Annexure P-13) are set aside. The respondents will be entitled to refix the salary of

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the petitioner as per his entitlement but any excess amount paid beyond the entitlement of the petitioner, will not recovered. In case any such recovery has been made, the said recovered amount will be refunded back to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

11. The present writ petition is allowed in above terms.

February 13, 2025
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No