HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 4169/2021

Ashok Kumar S/o Prema Ram, Aged About 62 Years, R/o Dr. Suparurnanand Colony, Sirohi, Raj.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Finance, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
2. The Secretary, Rural Development And Panchayati Raj Department, Government Of Rajasthan, Jaipur.
3. The District Collector, Sirohi.
4. The Chief Executive Officer, Sirohi.
5. The Block Development Officer, Sirohi.
6. The Additional Director, Pension And Pensioners Welfare Department, Jodhpur.

----Respondents

For Petitioner(s)	:	Mr. Tanwar Singh
For Respondent(s)	:	Mr. Mahaveer Prashad Mr. Kuldeep Vaishnav

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JUSTICE DINESH MEHTA

Order

11/02/2025

1. By way of present writ petition, the petitioner has challenged the order dated 01.02.2021, whereby the respondents have refixed petitioner's salary and recalled the already sanctioned pay grade increments.

2. The facts in short are that the petitioner used to work as Nakedar in Municipality, whereafter consequent to abolition of the octroi and such post, he was absorbed as Gram Sewak in the Panchayati Raj Department. After being absorbed, the petitioner

continued as such and retired on 30.04.2019 and was given pay grade increments.

3. After petitioner's retirement, order dated 01.02.2021 came to be passed and the respondents reworked the date of the increments and sought to recover the differential amount.

4. Mr. Tanwar Singh, learned counsel for the petitioner submitted that the annual grade increments were given by the respondents as per their own will and accord and the petitioner had never misled or misrepresented. It is also argued that the recovery in question has been raised on the basis of circular dated 09.03.2012, as is evident from the reply, whereas the said circular has been quashed by the Jaipur Bench of this Court by judgment dated 12.04.2017 passed in S.B. Civil Writ Petition No.5400/2015.

5. Learned counsel argued that the respondents cannot recover already disbursed amount even if the same is alleged to be in excess after the petitioner had retired as held by Hon'ble the Supreme Court in the case of State Of Punjab & Ors vs. Rafiq Masih (White Washer), reported in (2015) 4 SCC 334.

6. Learned counsel for the respondent on the other hand submitted that the circular dated 09.03.2012 has been quashed only qua the petitioner (Raj Kumar Aggarwal) and argued that if the increments have been wrongly granted, the State has every right to withdraw such orders and recover the amount paid in excess.

7. Heard learned counsel for the parties.

8. Indisputably, the impugned order dated 01.02.2021 has been issued in light of the circular dated 09.03.2012, which has

been quashed by the Jaipur Bench of this Court vide judgment dated 12.04.2017.

9. True it is, that the concluding para of the order dated 12.04.2017 gives an impression that the circular has been quashed only qua the petitioner but if the reasoning given therein is considered, the judgment dated 12.04.2017 cannot be construed to be a judgment in personam.

10. That apart, the recovery which has been sought to be made from the petitioner is contrary to the judgment passed by Hon'ble the Supreme Court in the case of Rafiq Masih (supra) as the respondents are seeking to recover the amount on alteration of the increments which was granted to him from the period 01.07.2006 to 01.07.2016.

11. No recovery can be made from the petitioner who has retired as a class-III employee, more particularly in absence of material showing misrepresentation or concealment on his part. The same is contrary to the judgment of Rafiq Masih (supra).

12. The writ petition is, therefore, allowed; impugned order dated 01.02.2021 is hereby quashed.

13. Stay application also stands disposed of.

(DINESH MEHTA),J

60-Arun/-