2026:PHHC:081532

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-614-2021
Date of decision: 22.05.2026

Krishna Kumari .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Raman Sharma, Advocate with
Mr. Arnav Sharma, Advocate
for the petitioner.

Mr. Siddharth Sandhu, AAG, Punjab.

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<u>NAMIT KUMAR, J. (ORAL)</u>

1. The present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, seeking issuance of a writ of certiorari, for declaring the action of the respondents as illegal and violative of Articles 14 and 16 of the Constitution of India in initiating the process of recovery of excess payment made to the petitioner due to the alleged wrong fixation of pay during the period from 01.01.2006 to 31.07.2011; in not granting ACP scales to the petitioner despite having submitted an affidavit dated 12.05.2010 and in not releasing the gratuity of the petitioner immediately upon her retirement. Further, a writ of mandamus has been sought for directing the respondents to release her gratuity with 18% interest and to grant her the benefit of ACP scales from the admissible dates, and after re-fixation of her pay and pension, to release the entire arrears with 18% interest within the

stipulated period of time.

2. Learned counsel for the petitioner submits that the petitioner joined service as a Staff Nurse with effect from 29.03.1978. During the course of her service, she was promoted to the post of Nursing Sister with effect from 09.02.1988. Though the petitioner initially attained the age of superannuation on 30.09.2015, her services were extended for a further period of two years, and she ultimately retired on 30.09.2017. However, her retiral dues were released by the respondents after a considerable delay, in the following manner:-

Sr. No.	Item	Date on which the amount was paid	Amount paid
1.	Leave encashment	11.04.2019	Rs.59,120/-
2.	GPF	11.04.2019	Rs.11,19,337/-
3.	Part payment of DCRG	October, 2023	Rs.2,36,067/-

3. He further submits that the remaining payment amounting to Rs.6,24,739/- has been withheld by the respondents on account of the alleged excess amount paid to the petitioner from 01.01.2006 to 31.07.2011 on account of wrong pay fixation. He submits that there was no misrepresentation on the part of the petitioner and the respondents themselves had fixed the pay of the petitioner, therefore, the same cannot be recovered in view of the law laid down by the Hon'ble Supreme Court in ***State of Punjab etc. Vs. Rafiq Masih (White Washer) etc., 2015(1) SCT 195***, wherein the following directions have been issued:-

> *"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."

4. Learned State counsel, despite his best efforts, has not been able to controvert the said contention of the learned counsel for the petitioner, though he has made reference to the averments made in para 14 of the reply dated 19.10.2023 and para 3 of the additional affidavit dated 02.01.2026/19.01.2026, which read as under:-

*"***Para 14 of the reply dated 19.10.2023:-**

14. That whereas, the petitioner has only challenged the action of the respondent regarding recovery of amounting to Rs.6,24,729/-, was pending towards the petitioner in view of the excess amount paid to her w.e.f. from 01.01.2006 to 31.07.2011 qua which have not been recovered by the respondent itself but same has been deducted or recovered by the concerned District Treasury Officer under the approval of the Accountant General, Punjab on account of given the pay of Rs.23,960/- w.e.f. 01.01.2006 whereas, the petitioner was entitled to get the pay of Rs.19,780/- besides the consequential excess payment of DA and HRA. Hence, after calculating the excess amount Rs.3,70,891/- on account of rendering service at Civil Hospital Taran Taran and Rs.2,53,838/- (Total Rs.6,24,729/-) on account of rendering services under the respondent department has rightly been recovered from the petitioner in the interest of State Exchequer. The recovered amount i.e. Rs.6,24,729/- has been recovered from the Total Gratuity amount i.e. Rs.8,60,706/- and as the authority issued by the office of *the Accountant General Punjab vide memo no.Pen/08/2181768387/2018-19/PE/18/10/80162367 dated 14.09.2018 in respect of the petitioner has expired qua vide memo No.Pen-A/2023-24-6217 dated 31.08.2023, the District Treasury Officer Gurdaspur has requested the office of Accountant General Punjab for revalidation of same and the remaining part of the DCRG shall immediately be paid to the petitioner after attaining the revalidation from the office of Accountant General Punjab.*

Para 3 of the additional affidavit dated 02.01.2026/19.01.2026 :-

3. That it is respectfully submitted that at the time of pay fixation the petitioner was posted at Civil Hospital, Tarn Taran. As per office records and as per report given by SMO Civil Hospital Tarn Taran vide letter dated 24-12-2025, the pay of the petitioner was fixed on 01-01-2006 and no undertaking was submitted by the petitioner during the pay fixation process at that time.

In light of above submission, this additional affidavit is being filed for the kind perusal of this Hon'ble Court in compliance of order dated 07/04/2025 passed by this Hon'ble Court."

5. I have heard learned counsel for the parties and perused the record.

6. The petitioner retired from service upon attaining the age of superannuation on 30.09.2017, however, her retiral dues were released after a considerable and unjustified delay. It is a well settled proposition of law that pension and other retiral benefits are not a matter of grace or bounty, but constitute a vested and enforceable right accruing to an employee upon retirement, governed by statutory rules. The timely disbursement of such benefits is a legal obligation of an employer, and any delay therein, unless justified by cogent and lawful reasons attributable to the employer, is wholly impermissible in law.

7. The Full Bench of this Court in ***A.S. Randhawa Vs. State of Punjab : 1997(3) S.C.T. 468*** has held that where there is an inordinate delay in releasing retiral benefits and the delay is not

justifiable, an employee will be entitled for interest. The relevant paragraph of the said judgment is as under:-

> *"8. Since a government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retirer in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the period of delay on the amount as was due to him on the date of his retirement. xx xx xx xx"*

8. Apart from this, in ***J.S. Cheema Vs. State of Haryana and others : 2014(13) RCR (Civil) 355***, this Court had held that an employee will be entitled for the interest on an amount which has been retained by the respondents without any valid justification. The relevant paragraph of the said judgment is as under: -

> *"5. xx xx xx xx The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."*

9. The State, being a model employer, is expected to act fairly, reasonably and expeditiously in settling retiral claims. Any unexplained delay not only causes financial hardship to the retiree, who is dependent upon such dues for post-retiral sustenance, but also amounts to arbitrary deprivation of property, offending the mandate of

Articles 14, 21 and 300-A of the Constitution of India. Therefore, denial of interest in cases of unjustified delay would amount to allowing the State to take advantage of its own lapse, which is impermissible in law.

10. So far as the recovery of Rs.6,24,739/- is concerned, which has been recovered from the gratuity amount of the petitioner, the same was withheld by the respondents on account of the alleged excess payment made to the petitioner from 01.01.2006 to 31.07.2011. It is an admitted position that the said payment was neither induced by any misrepresentation nor attributable to any fraud on the part of the petitioner, rather the pay of the petitioner was fixed by the respondents themselves. Therefore, in such circumstances and in view of the law laid down by the Hon'ble Supreme Court under clause (i) & (iii) of para 12 of the judgment in ***Rafiq Masih's case (supra)***, no recovery can be effected from the petitioner as the same is wholly arbitrary, inequitable and unsustainable in law.

11. Consequently, the present writ petition is allowed. The respondents are directed to refund the amount of Rs.6,24,739/-, and the petitioner shall also be entitled to interest @ 7% per annum on the said amount, and the amount of retiral dues of the petitioner after two months from the date of retirement till its actual payment(s). The necessary benefits shall be released to the petitioner within a period of three months from the date of receipt of certified copy of this order.

22.05.2026 **(NAMIT KUMAR)**
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No