IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

104 **CWP-2354-2026 (O&M).**
Date of Decision: 11.03.2026.

Anil Kumar Aggarwal ....Petitioner.

VERSUS

Punjab State Power Corporation Limited and another ....Respondents.

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CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Inderjit Sharma, Advocate and
Ms. Khusboo, Advocate for the petitioner.

Mr. Harsh Suhalia, Advocate for respondent-PSPCL.

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HARPREET SINGH BRAR, J.

1. The present petition has been preferred under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for quashing of impugned memos dated 27.08.2025 (Annexure P-9) and dated 29.09.2025 (Annexure P-12) issued by respondent No.2-Additional Superintendent Engineer, Distribution Division, PSPCL, Gurdaspur, whereby arrears of revised pay/ pension/family pension, leave encashment from 01.01.2016 to 30.06.2021 has been withheld from the petitioner. Further, a writ of *Mandamus* is sought directing the respondents to release the arrears of pension amounting to Rs.5,77,386/- and any other amount accrued to the petitioner in terms of circular dated 03.04.2025 (Annexure P-7) to him, with an interest at the rate of 12% per annum.

CONTENTIONS

2. Learned counsel for the petitioner *inter alia* contends that the petitioner was serving as Superintendent Engineer with the respondent-Corporation and attained the age of superannuation in the year 2004. On the eve of his retirement, no departmental inquiry was pending against him, as such, he was granted all his retiral benefits without making any reduction. However, the petitioner received a memos dated 14.08.2024 and 21.10.2024 regarding re-fixation of his pension. The same were ultimately set aside vide order dated 18.11.2025 (Annexure P-5) by this Court in CWP-30677-2024. Learned counsel further submits that the Government of Punjab has issued instructions dated 18.02.2025 (Annexure P-6) directing all heads of departments of the state to release the arrears of pay/pension/family pension, leave encashment for pensioners in the age band 75- 85 years for the period from 01.01.2016 to 30.06.2021, in 12 equal monthly installments, commencing from the month of April, 2025. The said instructions were also adopted by the respondent-Corporation vide circular no.3/2025 (Annexure P-7). Since the petitioner retired in the year 2004 and is 79 years old, he is entitled to the benefit of circular no.3/2025 (Annexure P-7) as well.

3. He further submits that the petitioner sent a detailed representation dated 16.06.2025 to the respondent-Corporation requesting to release the arrears of pension for five and half years, as stipulated in the circular (Annexure P-7). However, instead of releasing the arrears to the petitioner, the respondents issued impugned memo dated 27.08.2025 (Annexure P-9) stating that the petitioner has received an excess salary/

pension amount of Rs.5,96,758/- already and thus, is not entitled to the arrears of correct pension i.e. Rs.5,77,386/-. The petitioner submitted a detailed reply and a reminder regarding the same but instead of appreciating the same, respondent No.2 issued impugned memo dated 29.09.2025 (Annexure P-12) reiterating that he is not entitled to arrears as he has already received an excess of Rs.5,96,158/- from the respondent-Corporation due to wrong fixation of pension. Aggrieved by the impugned memos (Annexures P-9 and P-12), the petitioner filed COCP-5259-2025 but the same was dismissed as withdrawn with liberty file a fresh petition with better particulars vide order dated 27.11.2025 (Annexure P-13). Thereafter, COCP-6329-2025 was filed however; the same was also dismissed as withdrawn with the liberty to avail other remedies, vide order dated 24.12.2025.

4. Learned counsel contends that this Court vide order dated 18.11.2025 (Annexure P-5) had set aside the memos issued by the respondents (Annexures P-1 and P-3) for re-fixation of his pay/pension. In fact, it was made clear that no recovery shall be effected from the petitioner; rather any amount already recovered was ordered to be refunded. Therefore, the respondents cannot cunningly recover Rs.5,96,158/- granted to the petitioner due to wrong fixation of pension in the year 2004, for no fault on his part, by denying him benefits of the circular (Annexure P-7). The respondents are unjustly and indirectly attempting to adjust the said amount (Rs.5,96,158/-) against Rs.5,77,386/- which has now become due to the petitioner, particularly since the re-fixation attempted vide memos (Annexures P-1 and P-3) were set aside by this Court. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court in ***State of Punjab vs.***

Rafiq Masih 2015(1) SCT 195. The petitioner is fully covered under the circular (Annexure P-7) and an entitlement of Rs.5,77,386/- has also been ascertained. However, the respondent-Corporation has been illegally withholding the same from the petitioner. Thus, the petitioner is also entitled to interest on the same in the judgment rendered by a Full Bench of this Court in ***A.S. Randhawa Supg. Engineer (Retd.) vs. State of Punjab 1998 (1) SCT 343.***

5. *Per contra,* learned counsel for the respondent-Corporation argues that the petitioner was drawing a pension as per the scale of 2006 and his basic pension was Rs.28,750/- while it should have been Rs.25,450/- per the applicable rules. Thereafter, the wrongly ascertained basic pension was also modified per the scale of 2016 and evolved to Rs.70,423/- while it should have been Rs.62,340/-. When this error was detected, the respondent-Corporation revised the pension in July, 2024 and a recovery amount of Rs.11,75,704/- was worked out from 01.01.2006 to 30.06.2024. The petitioner was informed about the revision and proposed recovery vide Annexure P-1, against which his consent was also sought, However, a reference to recovery of Rs.2,91,323/- was made in CWP-30677-2024, which formed a part of a routine internal calculation and was never intimated to the petitioner. Learned counsel further submits that reliance placed by the petitioner on ***Rafiq Masih (supra)*** is misfounded as it only protects one from coercive recovery but does not create a positive right to retain erroneous payment.

6. He further submits that the petitioner had demanded arrears from 01.01.2016 to 30.06.2021 in terms of circular (Annexure P-7). In response, impugned memos (Annexures P-9 and P-12) were issued, informing the

petitioner that he has already drawn an excess payment of Rs.5,96,158/- because of erroneous calculation for the said time period. If arrears were calculated on correct basic pension, it would have been Rs.5,77,386/-, as such, he is already in receipt of more than the amount lawfully due. The benefits under the circular (Annexure P-7) are not a separate monetary benefit but only represent revision of pension. Since the petitioner has already received enhanced pension for the said period, releasing the same amount against would equate to double payment. Essentially, the change has only been made in nomenclature-from "excess pension" to "arrears." Releasing Rs.5,77,386/- would result in unjust enrichment which is neither permissible in law, nor contemplated under the circular (Annexure P-7).

OBSERVATIONS AND ANALYSIS

7. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner retired from service on 31.01.2004, with an unblemished service record. Upon his superannuation, all his retiral dues were released to him. However, as recorded in CWP-30677-2024, the pay/pension of the petitioner was incorrectly fixed but the error was caused by an administrative lapse and not any misrepresentation or fraud perpetuated by him. After about two decades, the petitioner was issued memos dated 14.08.2024 and 21.10.2024 (Annexures P-1 and P-3) whereby a demand for recovery on account of this miscalculation by the respondent-Corporation was made. However, vide order dated 18.11.2025 (Annexure P-5), the aforementioned writ petition was allowed and the following relief was granted:

> *"6. It is not in dispute that the petitioner is a pensioner and no material has been brought on record by the respondent/Corporation to show*

> *that any fraud or misrepresentation was committed by the petitioner while receiving the pension. On the contrary, the explanation furnished is that excess pension payment was made to the petitioner, which is an administrative lapse. In that eventuality, the petitioner cannot be blamed as he has not mislead the respondent/Corporation in order to secure higher amount of pension. The Hon'ble Supreme Court in **Rafiq Masih's case (supra)** has clearly held that recovery from retired employees or their family pensioners especially when there is no fraud or misrepresentation, is impermissible in law…*
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> *xxx xxx xx*
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> *8. The legal framework governing the recovery of excess payments made to a public servant is fundamentally rooted in the principles of equity and judicial discretion, rather than in conferring any absolute right upon the employee. The primary objective of this discretionary relief is to shield the employees, particularly those in the lower echelons of service, from the crippling hardship that would ensue from recovering amounts already spent with a bona fide belief that they were legitimately entitled for them.*
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> *9. In view of the above facts and circumstances, the present writ petition is allowed in terms of **Rafiq Masih's case (supra)**. The impugned Memo/Notice No.6445 dated 14.08.2024 (Annexure P-1) and Memo No.8041 dated 21.10.2024 (Annexure P-3) are hereby set-aside. The respondents are directed to refund the amount if already recovered from the petitioner from the date of recovery till its actual realization, along with interest at the rate @ 6% per annum, within a period of three months from the date of receipt of a certified copy of this order."*

8. A perusal of the above makes it rather palpable that the respondent-Corporation was not given any leeway to recover the excess amount paid to the petitioner since his retirement in the year 2004, as a result of an administrative lapse. It took the respondent-Corporation about two decades to identify the error. However, since the petitioner was regularly drawing the same pension since his retirement and had not indulged in making any misrepresentations, it can be reasonably inferred that he had a *bona fide* belief with regards to his entitlement to the same. As such, this sum

already availed by the petitioner stands on its own footing and cannot be equated to arrears meant to be disbursed in terms of circular (Annexure P-7).

9. It appears that the respondent-Corporation is making an attempt to fix its balance sheets by making a comparison between the excess amount discharged as pension due to its negligence and the arrears due to the petitioner in terms of the circular (Annexure P-7). The change is not merely of nomenclature but pertains to the very nature of the payment. It must be remembered that the petitioner was under the *bona fide* belief that he is receiving the sum he is entitled to. Subsequent discovery of an error on part of the respondent-Corporation does not absolve it from the consequences thereof. The recovery of the excess payment made towards pension was specifically proscribed vide order dated 18.11.2025 (Annexure P-5) and it is evident that the respondent-Corporation is attempting to do just that by denying the petitioner arrears in terms of circular (Annexure P-7). It is trite law that what cannot be done directly, can also not be done indirectly. Moreover, in spite of the rationale being self-evident, the respondent-Corporation has, in essence, passed the same order yet again in form of the impugned orders (Annexures P-9 and P-12), in direct contravention of hte decision in CWP-30677-2024. Therefore, the respondent-Corporation cannot be allowed to undermine the order of this Court merely to escape consequences of its own administrative lapses.

10. Further, a Full Bench of this Court in ***Budh Ram and others vs. State of Haryana and others*** in ***CWP No.2799 of 2008*** *decided on 22.05.2009* dealt with the issue of recovery of excess payment made to an mployee *in extenso*. It was held that while the same can be allowed in case of

fraud or misrepresentation resulting in disbursement of more than the deserved amount, however, when there is no element of deception on part of the employee, it would be inequitable to effect recovery. Speaking through Justice T.S. Thakur, the following was held:

> *"Cases involving recovery of benefits received by the employees on account of misrepresentation or erroneous application of rules, regulations, circulars or instructions issued by the Government have often come up before the Courts including the Apex Court.* ***<u>The consistent view taken as regards the recovery of such benefits erroneously extended to the employees without the employee being, in any way, guilty of any fraud, misrepresentation or deception is that such recovery would be unfair inequitable and against justice and good conscience.</u>*** *In* ***Bihar State Electricity Board and another Vs. Bijay Bahadur and another, 2000 (10) SCC 99****, even when their Lordships recorded a finding that the employee did not possess the requisite qualification for the benefit granted to him and was not, therefore, entitled to any relaxation of the Rules held that it would be against the concept of fairness, equity, justice and good conscience to recover the amount received by him in consequence of the benefit granted to him. Concurring with the observations made by their Lordships' in* ***Sahib Ram's case (supra),*** *the Court observed:-*
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>> *"We do record our concurrence with the observations of this Court in Sahib Ram case (supra) and come to the of conclusion* ***<u>that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances.</u>****"*
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>> *In Sahib Ram's case (supra), referred to earlier, also the employee did not possess the requisite qualification but had received the salary on revised scales. Their Lordships however, held that the benefit flowing to the employee was not on account of any misrepresentation but on account of legal construction made for which the employee cannot be found fault with. The Court observed :-*

> *"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 revised scale.* ***However, it is not on account of any misrepresentation made by the appellant that the benefitof 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 the 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."*
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> (emphasis added)

11. A three-Judge Bench of the Hon'ble Supreme Court in ***Syed Abdul Qadir and others vs. State of Bihar and others (2009) 3 SCC 475,*** speaking through Justice B.N. Agrawal, opined as follows:

> *"27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) 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.* ***The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.*** *See Sahib Ram v. State of Haryana, 1995(1) SCT 668 : 1995 Supp. (1) SCC 18, Shyam Babu Verma v. Union of India, 1994(2) SCT 296 : [1994]2 SCC 521; Union of India v. M. Bhaskar, 1996(4) SCT 57 : [1996]4 SCC 416; V. Ganga Ram v. Regional Jt., Director, 1997(3) SCT*

> *72 : [1997]6 SCC 139; Col. B.J. Akkara [Retd.] v. Government of India & Ors., (2006) 11 SCC 709; Purshottam Lal Das & Ors. v. State of Bihar, 2006(4) SCT 537 : [2006]11 SCC 492; Punjab National Bank & Ors. v. Manjeet Singh & Anr., 2006(4) SCT 570 : [2006]8 SCC 647 and Bihar State Electricity Board & Anr. v. Bijay Bahadur & Anr., [2000] 10 SCC 99."*
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> (emphasis added)

The ratio culled out in ***Syed Abdul Qadri(supra)*** has also been reiterated by the Hon'ble Supreme Court in ***Jagdish Prasad Singh*** (supra).

12. In ***Thomas Daniel v. State of Kerala and others, 2022 (2) SCT 722***, a two-Judge Bench of the Hon'ble Supreme Court observed that no recovery of the excess amount paid to an employee can be effected especially when there was no misrepresentation on the part of the employee concerned. Speaking through Justice S. Abdul Nazeer, the following was held:

> *"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."*
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> (emphasis added)

CONCLUSION

13. Accordingly, the present petition is allowed. The impugned memos dated 27.08.2025 (Annexure P-9) and dated 29.09.2025 (Annexure P-12) issued by respondent No.2-Additional Superintendent Engineer are hereby set aside. Further, the respondents/competent authority are directed to release the arrears of pension amounting to Rs.5,77,386/- and any other amount accrued to the petitioner in terms of circular dated 03.04.2025 (Annexure P-7) to the petitioner. The petitioner shall also be entitled to interest at the rate of 6% p.a. on the amount due, computable from April, 2025 to its actual realisation in terms of ***A.S. Randhawa (supra).***

14. This Court also deems it appropriate to impose a cost of Rs.50,000/- upon the respondent-Corporation, payable to the petitioner for the unnecessary harassment caused to him and towards the litigation expenses he had to bear.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

11.03.2026
jitender

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No