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

**CWP-7119-2023(O&M)
Date of decision : 23.02.2026**

Rajinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPINDER SINGH
NALWA**

Present: Mr. Sonu Bhatia. Advocate for
Mr. Surmukh Singh, Advocate for the petitioner.
Mr. Amarpreet Singh Bains, AAG, Punjab.

DEEPINDER SINGH NALWA, J. (Oral)

In the present writ petition, the petitioner is praying for issuance of a writ in the nature of certiorari for quashing the letter dated 06.03.2023 (Annexure P-5) whereby the pay of the petitioner has been refixed and it has been decided to recover an amount of Rs.2,57,342/- from the pay of the petitioner.

2. The brief facts of the case are that in the year 1992, an advertisement was issued for filling up of 2461 posts of School Master/Lecturer. In pursuance of the of the abovesaid advertisement, petitioner applied for the post of Lecturer in the subject of Biology. The petitioner was selected and an appointment letter dated 18.08.1994 (Annexure P-1) was issued to the petitioner. The abovesaid selection was challenged before this Court in ***CWP No.5985 of 1994*** titled as



Yashwinder Singh Rana and others Vs. State of Punjab and others,

which was decided vide order dated 28.09.1994, whereby services of all the candidates including the petitioner were terminated. Thereafter, fresh advertisement was issued on 28.12.1994. The petitioner again applied in pursuance of the abovesaid advertisement dated 28.12.1994 for consideration for appointment to the post of Lecturer in subject of Biology. The petitioner was duly selected in pursuance of the abovesaid advertisement. It transpires that meanwhile the petitioner was appointed on 89 days adhoc basis. The State of Punjab issued an Ordinance in the year 1999 in regard to recruitment of Teachers. In pursuance of the abovesaid Ordinance, the petitioner was appointed on regular basis vide appointment letter dated 06.12.1999 (Annexure P-3) and she joined the duty on 09.12.1999. The petitioner received a letter dated 06.03.2023 (Annexure P-5) whereby it was informed to the petitioner in regard to refixation of pay w.e.f. August, 2022, and recovery of an amount of Rs.2,57,342/- from the pay of the petitioner on the ground that while fixing pay of the petitioner, adhoc service rendered by the petitioner was taken into consideration, which was contrary to the rules. Aggrieved against the abovesaid letter dated 06.03.2023 (Annexure P-5), the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner does not dispute in regard to refixation of pay of the petitioner. He submits that the excess payment received by the petitioner on the basis of wrong fixation of pay by the respondents was not on the basis of any fraud, concealment



of facts or misrepresentation on the part of the petitioner. It is also the case of learned counsel for the petitioner that the petitioner was to retire on 28.02.2024 i.e. within one year, on attaining the age of superannuation, as such, no recovery could have been effected from the pay of the petitioner. Reliance is made to the instruction dated 28.08.2015 (Annexure P-7) issued by the State of Punjab and on the judgment passed by Hon'ble the Supreme Court in the case titled as ***State of Punjab and others versus Rafiq Masih (White Washer) and others, 2015(1) SCT 195.***

4. On the other hand, learned State counsel submits that as the fixation of pay in case of the petitioner was contrary to the rule as such, the State has a right to recover the excess amount given to the petitioner. It is also the case of learned State counsel that the State has a right to rectify the mistake and on that ground also, the State can recover the excess payment given to an employee.

5. I have heard learned counsel for the parties at length and perused the paper-book along with records.

6. The only issue involved in the present petition is whether the respondents can recover excess payment given to the petitioner on the basis of wrong fixation of pay.

7. A perusal of the facts of the case would show that the pay of the petitioner was fixed by the respondents after taking into consideration the adhoc service rendered by the petitioner prior to her regular appointment. It is not a case of learned State counsel that in respect of pay fixation of the petitioner, there was any fraud,



concealment of facts or misrepresentation on the part of petitioner. It is also not the case of learned State counsel that it was in the knowledge of the petitioner that she was granted higher pay than her entitlement as per the rules. It is also not in dispute that petitioner is due to retire within one year from the issuance of letter of recovery. In regard to the recovery to be effected from an employee is concerned, Hon'ble the Supreme Court in *Rafiq Masih (White Washer) and others' case* (supra), has held that no recovery can be effected from the retired employee or employees who are due to retire within a period of one year from the order of recovery. The relevant extract of the aforesaid judgment is reproduced 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 employees, 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 the 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. Reliance has also been made to the judgment passed by Hon’ble the Supreme Court in the case titled as **Jogeswar Sahoo and others Vs. The District Judge, Cuttack and others, 2025(6) SLR 106**. The issue before Hon’ble the Supreme Court was in regard to effecting recovery of an amount extended to the appellants therein while they were in service. In the said judgment, it was held by Hon’ble the Supreme Court that as it did not reflect in the record that an excess payment was made to the appellants therein on account of any fraud or misrepresentation, as such, the recovery was found to be unsustainable. The relevant extract from the abovesaid judgment in **Jogeswar Sahoo case (supra)** is reproduced hereinbelow:-

“7. The issue falling for our consideration is not about the legality of the retrospective promotion and the financial benefit granted to the appellants on 10.05.2017. The issue for consideration is whether recovery of the amount extended to the appellants while they were in



service is justified after their retirement and that too without affording any opportunity of hearing.

8. The law in this regard has been settled by this Court in catena of judgments rendered time and again; *Sahib Ram vs. State of Haryana*, (1995) Supp (1) SCC 18: [1994(5) SLR 753 (SC)], *Shyam Babu Verma vs. Union of India*, (1994) 2 SCC 521: [1994(1) SLR 827 (SC)], *Union of India vs. M. Bhaskar*, (1996) 4 SCC 416: [1996(4) SLR 450 (SC)] and *V. angaram vs. Regional Jt. Director*, (1997) 6 SCC 139: [1997(4) SLR 311 (SC)] and in a recent decision in the matter of *Thomas Daniel vs. State of Kerala & Ors.*, (2022) SCC online SC 536.

9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part 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 payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.

10. In *Thomas Daniel* (supra), this Court has held thus in paras 10, 11, 12 and 13:

“10. In *Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18, this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the



authority concerned, without any misrepresentation on part of the employees. It was held thus:

“5. 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 the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the 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 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.”

11. In Col. B.J. Akkara (Retd.) v. Government of India, 2006 (11) SCC 709 this Court considered an identical question as under:

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC



416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.



29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

12. In Syed Abdul Qadir v. State of Bihar, 2009 (3) SCC 475 excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in



such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”



13. In *State of Punjab v. Rafiq Masih (White Washer)* wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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.”

11. In the case at hand, the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It is not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. It seems, when the financial benefit was extended to the appellants by the District Judge,



Cuttack, the same was subsequently not approved by the High Court which resulted in the subsequent order of recovery. It is also not in dispute that the payment was made in the year 2017 whereas the recovery was directed in the year 2023. However, in the meanwhile, the appellants have retired in the year 2020. It is also an admitted position that the appellants were not afforded any opportunity of hearing before issuing the order of recovery. The appellants having superannuated on a ministerial post of Stenographer were admittedly not holding any gazetted post as such applying the principle enunciated by this Court in the above quoted judgment, the recovery is found unsustainable.

12. For the aforestated, we are of the considered view that the appeal deserves to be allowed. Accordingly, we allow the appeal and set aside the order of the High Court and in consequence the orders dated 12.09.2023 and 08.09.2023 by which the appellants were directed to deposit the excess drawn arrears are set aside.”

9. Taking into consideration the fact that the letter in regard to recovery from the pay of the petitioner was issued on 06.03.2023 (Annexure P-5) and the petitioner was to retire on attaining the age of superannuation on 28.02.2024, which is less than one year, and the ratio laid down in the above referred judgments of Hon’ble the Supreme Court, no recovery of amount can be effected by the respondents from the pay of the petitioner. As such, the present writ petition deserves to be allowed.

10. Accordingly, the present writ petition is allowed and letter dated 06.03.2023 is quashed.



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

23.02.2026	(DEEPINDER SINGH NALWA)	
<i>d.gulati</i>	JUDGE	
Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No