2026:PHHC:088492

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-12256-2005 (O&M)

Dharam Pal Ahlawat (since deceased) through LRs

… Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

…Respondents

1.	**Date when judgment was reserved**	**05.05.2026**
2.	**Date of pronouncement of judgment**	**01.07.2026**
3.	**Date of uploading the judgment**	**01.07.2026**
4.	**Whether operative part or full judgment is pronounced**	**Full**
5.	**Delay, if any, in pronouncing of full judgment and reasons thereof**	**Not Applicable**

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. C.P. Tiwana, Advocate
for the petitioner.

Mr. Kartar Singh Malik, Advocate
for the respondents.

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HARPREET SINGH BRAR, J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for quashing the impugned Last Pay Certificate dated 15.07.2005 (Annexure P-1) vide which Basic Pay of the petitioner has been reduced. Further, for issuance of a writ in the nature of *Mandamus* directing the respondents to grant the Basic Pay as was earlier and the pensionary benefits on the basis of his previous basic pay i.e. 8475.

CONTENTIONS

2. Learned counsel for the petitioner has contended that the petitioner was appointed as Upper Division Clerk (UDC) on 05.10.1972 with the respondent-UHBVNL. At the time of his appointment, the pay of the petitioner was fixed at Rs.700/-. Subsequently, the Government of Haryana revised the pay scale for UDCs and thus, the pay of the petitioner was fixed at Rs.1600/- in the new scale of 1200-2040. The petitioner had been drawing this pay with annual increment up to 01.10.1990. The petitioner also received two ACPs during the course of his service. Ultimately, he retired on 31.10.2004 upon attaining the age of superannuation. At the time of his retirement, he was drawing pay of Rs.8475 regarding which no objection was raised by the respondent-UHBVNL at any time during the subsistence of his service.

3. He has further submitted that the pay of the petitioner was fixed w.e.f. 01.01.1986, however, 18 years later the same has been reduced from Rs.1600/- to Rs.1400/- w.e.f. 01.01.1986 vide the refixation order dated 01.07.2005 (Annexure P-2). Learned counsel contended that no show cause notice was issued to the petitioner in this regard, rather he found out from the the impugned Last Pay Certificate that his basic pay has been reduced from Rs.8475/- to Rs.7600/-, which also affects the calculation of the quantum of his pensionary benefits. Further still, vide the impugned Last Pay Certificate, recovery of Rs.1,53,361/- has been ordered from the petitioner owing to the refixation of pay, without providing him any opportunity of hearing. The respondent-UHBVN has not only failed to abide by the principles of natural justice but also the judgment of the Hon'ble Supreme Court in ***State of Punjab vs. Rafiq Masih 2015(1) SCT 195***.

4. *Per contra,* learned counsel for the respondent-UHBVNL contended that the petitioner was required to cross the Efficiency Bar in order to get the pay

of Rs.750/- . While the petitioner crossed the same w.e.f. 01.10.1989, the benefit thereof was inadvertently granted w.e.f. 01.10.1984. Thus, the petitioner continued to avail the undue benefit of higher pay. The error came to the notice of the respondent-UHBVNL at the time of his retirement, during the finalisation of his pension. Learned counsel has argued that a show cause notice dated 25.08.2005 (Annexure R-1) was indeed issued to the petitioner, however, he failed to file any reply.

OBSERVATIONS AND ANALYSIS

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner retired from service of the respondent-UHVBL on 31.10.2004 as a UDC. At the time of processing his pensionary documents, the relevant authorities realised that the petitioner had been receiving a higher pay w.e.f. 01.10.1984 while he only became eligible for it when he passed the Efficiency Bar on 01.10.1989. Upon detecting the error, the respondents refixed the pay of the petitioner and issued him the impugned Last Pay Certificate (Annexure P-1) reflecting the same as Rs.7600/- instead of Rs.8475/-, which he had been consistently drawing. Furthermore, a recovery of Rs.1,53,361/- was also ordered on account of the excess amount paid to him due to the aforementioned error. While the petitioner claims no show cause notice was ever issued to him in this regard, the respondent-UHBVNL claimed that show cause notice dated 25.08.2005 (Annexure R-1) was issued to him, to which no reply was filed.

6. The clerical oversight on part of the respondent-UHBVNL from about two decades ago cannot be allowed to affect the rights of the petitioner, especially when no fault has been attributed to him with regard to any miscalculations. Admittedly, no objection was raised by the respondent-UHBVNL during the

course of the service of the petitioner regarding the pay drawn by him. It is a well settled principle that employees should not be deprived of their lawful benefits or suffer adverse consequences due to such employer omissions. The principle of equity and fairness demands that the burden of administrative or technical lapses not be shifted unfairly to the employees who had no role in these omissions. Employees cannot be made to bear the financial or career consequences of the employer's negligence, delay, or wrongful implementation, especially when they had no contributory role in the lapse. This Court is constrained to observe that the conduct exhibited by the respondents is unbecoming of a public employer. The State and its instrumentalities, being model employers, are held up to higher standards and therefore, bear an additional responsibility to ensure that their actions are not perceived as arbitrary or lackadaisical.

7. Furthermore, in ***Rafiq Masih (supra)***, a two-Judge Bench of the Hon'ble Supreme Court has categorically held that recovery from retired employees is impermissible in law. Speaking through Justice Jagdish Singh Khehar, the following was observed:

> "*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."

7.1. A two-Judge Bench of the Hon'ble Supreme Court in ***Jagdish Prasad Singh vs. State of Bihar 2024 AIR Supreme Court 3950,*** speaking through Justice Sandeep Mehta, has held as follows:

"21. ***We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir and Others v. State of Bihar and Others (2009) 3 SCC 475, this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery.*** *The relevant paras of the* ***Syed Abdul Qadir(supra)*** *are extracted hereinbelow: -*

> *"57.* ***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****.*
>
> *58. 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.***
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> *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****."*
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> *(emphasis supplied)*
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> *22. Similarly, this Court in ITC Limited v. State of Uttar Pradesh and Others (2011) 7 SCC 493, held as under: -*
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> *"108. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made,* ***courts have recognised the need to give limited relief in regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation.*** *"”*
>
> *(Emphasis added)*

7.2. In ***Thomas Daniel vs. State of Kerala and others, 2022 (2) SCT 722***, a two-Judge Bench of the Hon’ble Supreme Court observed that recovery of the excess amount paid to an employee cannot 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."

(Emphasis added)

7.3. Furthermore, a two-Judge bench of the Hon'ble Supreme Court in ***Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department and other 2014 (3) SCT 98*** has categorically held that the pension must be based on the last pay drawn at the time of retirement. Speaking through Justice Anil R. Dave, the following was observed:

"7. Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. ***Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.***

xxx xxx xxx

10. For the aforestated reasons, we quash the impugned judgment delivered by the High Court and ***direct the respondents not to recover any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall***

> ***<u>be paid pension as fixed earlier at the time of his retirement.</u>*** *It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing pension of the appellant."*

7.4. This Court in ***Sajjan Kumar Goyal vs. State of Haryana and others*** in ***CWP-32661-2024*** decided on 04.11.2025 referred to Rules Rule 9.4(b)(iii) and Rule 6.19(c) of the Punjab Civil Services Rules, Volume II to conclude that in order to calculate average emoluments, the emoluments from the last 10 months be considered, whose accuracy can be determined by checking its record for the 24 months immediately preceding the date of retirement, and not for any earlier period. The following was held:

> *"30. At this juncture, it must also be pointed out that a combined reading of Rule 9.4(b)(iii) and Rule 6.19(c) of the Punjab Civil Services Rules, Volume II indicates that pension must be calculated on the basis of the employee's last drawn pay. The authorities are required to check only the accuracy of the emoluments for the 24 months immediately preceding the date of retirement, and not for any earlier period. Rule 9.4(b)(iii) is reproduced as under:*
>
> > *(iii) Calculation of Average emoluments.–For the purpose of calculation of average emoluments, the Head of Office shall verify from the service book, the correctness of the emoluments drawn during the last ten months of service.* ***<u>In order to ensure that the emoluments during the last ten months of service have been correctly shown in the service book, the Head of Office may verify the correctness of emoluments for the period of twenty-four months preceding the date of retirement of a Government employee, and not for any period prior to that date.</u>****"*
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> *(Emphasis supplied)*

31. The following observations made by a Co-ordinate Bench of this Court in ***Sarabjit Kaur vs. State of Punjab and others CWP-881-2015****, decided on 02.05.2017 are worth noting in this regard:*

> *"**I am of the view that the increments were wrongly granted. However, then the question would arise whether after 14-20 years of the grant of said increments, the same can be withdrawn, stating that these were wrongly granted? A perusal of Rule 9.4(b)(iii) read with Rule 6.19(c) of the Punjab Civil Services Rules, Volume II shows that for reckoning pension, the last drawn pay is to be seen and the office is to verify only the correctness of the emoluments for the period of 24 months preceding the date of retirement of the Govt. Employee and not for any period prior to that date. Therefore, the Accountant General was not justified in checking up the entire service record of the petitioner to see whether from the initial stage, the increments of proficiency step ups were correctly granted or not. Therefore, the order of withdrawing the proficiency step ups granted on 03.07.1993 and 03.07.1999 are contrary to Rule 9.4(b)(iii) of the Punjab Civil Services Rules, Volume II. Even if, it is assumed that the pay was wrongly fixed, in view of the authority of Hon'ble the Supreme Court "State of Punjab and others etc. v Rafiq Masih (White Washer) etc.", 2015(2)SCC (Civil) 608, the recovery cannot be effected from the retiral dues of the petitioner**.*
>
> ***In somewhat similar circumstances, the Apex Court in "Sushil Kumar Singhal v Pramukh Sachiv Irrigation Department and Ors.", 2014 (3) S.C.T. 98, quashed the refixation of the pay and the recovery orders.*** *In the Rule under consideration in the said case, the pension fixation authority then enquire the emoluments only for last 10 months, whereas under Rule 9.4(b)(iii) of the Punjab Civil Services Rules, Volume II, the correctness of the emoluments for the period of 24 months preceding the date of retirement of the*

Govt. employee and not for any period prior to that date, are verified."

CONCLUSION

8. In view of the above discussions, the present petition is allowed. The impugned Last Pay Certificate dated 15.07.2005 (Annexure P-1) indicating a lesser Basic Pay and ordering recovery, is hereby quashed and set-aside. The respondents/competent authorities are directed to recalculate the applicable pensionary benefits to the case of the petitioner based on the pay actually last drawn by the petitioner at the time of his retirement without accounting for the clerical omission with respect to the clearance of the Efficiency Bar. The needful be done within a period of 06 weeks from the date of receipt of a certified copy of this order. The benefits thus calculated shall be released to the legal representatives of the petitioner within a period of 03 months from the date of receipt of a certified copy of this order.

9. The petitioner shall also be entitled to interest @ 6% p.a. on the delayed payment of any pensionary benefits accrued to him, to be calculated after the expiry one month period after the date of his retirement till the date of actual realisation.

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

(HARPREET SINGH BRAR)
JUDGE

01.07.2026
yakub

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No