251 **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

CWP-9503-2025
Date of decision: 15.01.2026

SAROJ BALA ....Petitioner

Versus

STATE OF PUNJAB AND ORS ....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Virender K. Shukla, Advocate
for the petitioner.

Mr. Vikas Arora, DAG, Punjab.

Mr. Sanjeev Soni, Advocate with
Mr. Sarthak Soni, Advocate and
Ms. Nisha Grover, Advocate
for respondent No.2 and 3.

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<u>HARPREET SINGH BRAR, J (Oral):</u>

1. The instant writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ, order or direction especially in the nature of Certiorari for quashing the impugned order dated 20.09.2024 (Annexure P-4) issued by respondent No.2 and impugned order dated 07.11.2024 (Annexure P-5) issued by respondent No.3 whereby recovery of Rs.5,22,264/- has been made from the Gratuity of the petitioner without serving any Show Cause Notice or affording any opportunity of hearing, after her retirement from service on 29.02.2020. Further for issuance of a writ in the nature of Mandamus directing the respondents to refund the amount of recovery i.e. Rs.5,22,264/- made from the Gratuity of the petitioner along with interest thereon @ 12 % p.a.

2. Learned counsel for the petitioners *inter alia* contends that the petitioner entered into service as Clerk in respondent-Market Committee in

the year 1982 and she retired from service on 29.02.2020 on attaining the age of superannuation. On the eve of her retirement, there was no departmental or criminal proceedings pending against the petitioner. Vide the impugned order dated 20.09.2024 (Annexure P-4), an amount of Rs.5,22,264/- was deducted from the Gratuity of the petitioner. The recovery from the gratuity post retirement is not permissible in terms of settled law by ***State of Punjab vs Rafiq Masih, 2015(1) SCT 195***, ***Jasgdish Prashad Singh Vs. State of Bihar 2024 AIR SC 3950 and Thomas Daniel Vs. State of Kerala, 2022 SCC OnLine SC 536*** as well as instruction dated 28.08.2015 (Annexure P-6).

3. *Per contra*, learned counsel for respondents No.2 and 3 submit that an inquiry was initiated against the petitioner and it was found that the vouchers regarding material purchased, mentioned at Serial No.32, 33 and 34 were missing. The purchase of this material by the Market Committee was made during the period when the petitioner was serving as Incharge Secretary. During the tenure of the petitioner, the Market Committee has suffered a financial loss of Rs.5,22,264/- in view of which the said recovery was made.

4 However, learned counsel for respondents No.2 and 3 could not controvert the fact that the recovery was made from the Gratuity of the petitioner after her retirement.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. The petitioner retired on 29.02.2020 whereas the impugned order of recovery were passed on 20.09.2024 and 07.11.2024 (Annexure P-4 and P-5), respectively. The issue of effecting recovery from pension after

retirement has come up for consideration before the Hon'ble Supreme Court on multiple occasions. ***Rafiq Masih' case (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."*
>
> (Emphasis supplied)

7. Recently, a two-Judge Bench of the Hon'ble Supreme Court in ***Jagdish Prasad Singh's case (supra)***, 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.***

*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****."*

(emphasis supplied)

8. Similarly, this Court in ITC Limited v. State of Uttar Pradesh and Others (2011) 7 SCC 493, held as under: -

> *"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 supplied)

9. In ***Thomas Daniel v. State of Kerala and others, 2022 (2) SCT 722***, a two-Judge Bench of the Hon'ble Supreme Court speaking through Justice S. Abdul Nazeer, 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. Relevant paragraph of the said judgment is reproducedas under:-

> *"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 supplied)

10. The petitioner was also not provided a personal hearing and neither was she associated with the inquiry where veracity of the vouchers in question was examined. Notices under Rule 10 of the Punjab State Agricultural Marketing Board (P&A) Rules 1988 were issued to other employees whereas no such notice was served upon the petitioner. Even in the absence of any conclusive finding with regard to complicity of the petitioner, the recovery in view of the said entire material has only been fastened upon petitioner.

11. In view of the above, the present petition is allowed. The impugned orders dated 20.09.2024 and 07.11.2024 (Annexure P-4 and P-5) are set aside and respondent No.3 is directed to refund the amount of Rs.5,22,264/- recovered from the gratuity of the petitioner with interest at the rate of 6% p.a. to the petitioner. The interest shall be calculated from the date of expiry of three months from the date of her retirement till its actual realization. The aforesaid payment shall be made to the petitioner within a period of three weeks from the date of receipt of a certified copy of this order.

(HARPREET SINGH BRAR)
JUDGE

15.01.2026
monika

1. Whether speaking/ reasoned : Yes /No
2. Whether reportable : Yes /No