IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-14646-2020
Date of Decision : 13.05.2026

Mander Singh …..Petitioner

Versus

State of Punjab and others ....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Ritesh Aggarwal, Advocate with
Mr. Chankirat Singh Bakshi, Advocate for the petitioner.

Mr. Surya Kumar, A.A.G., Punjab.

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NAMIT KUMAR, J. (ORAL)

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking issuance of a writ of certiorari for quashing the order dated 22.07.2020 (Annexure P-7), passed by respondent No.4, whereby the pay of the petitioner has been reduced with retrospective effect and an amount of Rs.4,51,441/- has been ordered to be recovered, out of which Rs.35,000/- per month was ordered to be recovered from the pay of June, July, August and September 2020 and the remaining amount has been ordered to be recovered from the Leave Encashment of the petitioner, as the petitioner was due to retire on 30.09.2020. Further, seeking issuance of a writ of mandamus, directing the respondents not only to restore the pay of the petitioner but also to refund the amount already recovered from him and further to refix the pay of the petitioner as per rules and

also pay the arrears of re-fixed pay along with interest @ 12% per annum from the date of accrual till actual realization.

2. Brief facts of the case, as have been pleaded in the petition, are that the petitioner joined the service with the respondent-department in the Master Cadre on 31.12.1996 as Punjabi Master. Since the petitioner worked as Supervisor under the Adult Education Scheme of Punjab Government (Implemented under the Rural Functional Literary Programme) for the period from 15.02.1988 to 30.06.1991, therefore, he along with some other employees filed *CWP No.2952 of 2001 tiled as 'Sewa Singh and others Vs. State of Punjab and others'* before this Court for issuance of directions to the respondents-State to count their previous services rendered as Supervisor under the Adult Education Scheme for the purpose of fixation of pay and grant of other benefits. The said writ petition was disposed of by this Court, vide order dated 25.02.2001, with a direction to respondent No.2 therein to consider the representation/notice of demand served by the petitioners therein and decide the same by passing a speaking order in accordance with law within a period of four months. Pursuant to the said order, respondent No.2-Director Public Instruction (S.E.), Punjab, vide order dated 13.07.2001 (Annexure P-2), considered the claim of the petitioner and other employees and ordered grant of the benefit of their previous service for fixation of pay only. Consequently, the pay of the petitioner was re-fixed. Thereafter, the petitioner was promoted as Lecturer in English on 16.05.2012. Although, the petitioner was due to retire on attaining the age of superannuation on 30.09.2019, however, he was

granted one year extension in service as per policy of the Punjab Government till 30.09.2020. Before his retirement, the petitioner had requested respondent No.4 to prepare his pension case in time and send the same to the Accountant General (A&E) Punjab, Chandigarh for sanction of his pensionary benefits. However, respondent No.4, instead of preparing the pension case of the petitioner, issued a notice dated 30.06.2020 (Annexure P-3) to the petitioner demanding recovery of Rs.4,51,441/- allegedly on account of excess payment of pay. Thereafter, the petitioner submitted his reply to the said notice on 04.07.2020 (Annexure P-4) and requested that his pay should be fixed as per rules and his pension case may be sent, but instead of fixing the pay of the petitioner as per rules, respondent No.4, vide his order dated 18.07.2020, withdrew the notice dated 30.06.2020 and issued a fresh notice dated 18.07.2020 (Annexure P-5) to the petitioner. Thereafter, the petitioner again submitted his reply to the notice dated 18.07.2020 on 20.07.2020 (Annexure P-6). However, respondent No.4 instead of fixing the pay of the petitioner, passed impugned order dated 22.07.2020 (Annexure P-7), whereby the pay of the petitioner has been reduced with retrospective effect and an amount of Rs.4,51,441/- has been ordered to be recovered, out of which Rs.35,000/- per month was ordered to be recovered from the pay of June, July, August and September 2020 and the remaining amount has been ordered to be recovered from the Leave Encashment of the petitioner. Hence the instant petition.

3. While issuing notice of motion, vide order dated 17.09.2020, passed by this Court, further recovery from the petitioner was stayed.

4. Learned counsel for the petitioner submits that pursuant to the order dated 25.02.2001, passed by this Court in CWP-2952-2001, respondent No.2 passed order dated 13.07.2001, granting the benefit of previous service rendered by the petitioner as Supervisor under the Adult Education Scheme of Punjab Government from 15.02.1988 to 30.06.1991 for fixation of pay only. However, respondent No.4 had wrongly fixed the pay of the petitioner w.e.f. 15.02.1988 instead of 31.12.1996 i.e. the date of joining of the petitioner with the Punjab Education Department as Punjabi Master and this fact came to the notice of the respondents, while preparing the pension case of the petitioner. He further submits that the impugned order dated 22.07.2020, whereby recovery of Rs.4,51,441/- has been ordered to be effected from the petitioner, was passed by respondent No.4 only two months before the date of retirement of the petitioner i.e. 30.09.2020, which is in contravention of the judgment passed by Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** : ***2015(1) S.C.T. 195*** and instructions dated 20.10.2016 (Annexure P-9) issued by the Government of Punjab, Department of Finance.

5. On the other hand, learned State counsel, while referring to the averments made in the reply filed on behalf of respondent No.1 to 4, submits that there was a mistake committed by the department while re-fixing the pay of the petitioner at the time of giving him benefit of

earlier service rendered by him as Supervisor under the Adult Education Scheme of Punjab Government and, therefore, he was given monetary benefits in excess of his entitlement. As such, there is no illegality in the impugned order dated 22.07.2020 seeking recovery of the excess payment from the petitioner. He further submits that the petitioner had also furnished an undertaking dated 23.09.2009 (Annexure R-1), wherein he had stated that if any excess payment was made to him while fixing his pay, he would be liable for its recovery/adjustment from his salary/pension. In support of his contention, learned counsel for the respondents has placed reliance upon the judgment in ***High Court of Punjab & Haryana and others Vs. Jagdev Singh : 2016(14) SCC 267***

6. I have heard learned counsel for the parties and perused the relevant documents.

7. Admittedly, the petitioner retired from service on 30.09.2020, after getting one year service extension as per policy of the Government of Punjab and about two months prior to his retirement, respondent No.4 passed the impugned order dated 22.07.2020, whereby the pay of the petitioner was reduced with retrospective effect and recovery of Rs.4,51,441/-, alleged to be excess payment made to the petitioner, was ordered, out of which Rs.35,000/- per month ordered to be recovered from the pay of June, July, August and September 2020 and the remaining amount has been ordered to be recovered from the amount of Leave Encashment of the petitioner. The facts and circumstances of the present case suggests that it was nowhere the case of the respondent-department that there was any fraud or

misrepresentation on the part of the petitioner to enure the benefit of fetching excess payment, rather the same was being paid by the respondent-department at its own while re-fixing the pay of the petitioner at the time of giving him benefit of earlier service rendered by him as Supervisor under the Adult Education Scheme of Punjab Government. Further, if an excess amount was paid to the petitioner on the basis of wrong fixation of pay in the year 2001, the same cannot be recovered from him at the fag end of his retirement after a lapse of period of about 19 years.

8. The Hon'ble Supreme Court in ***Rafiq Masih's case (supra)*** has laid down circumstances where no recovery can be effected from an employee despite excess payment. The circumstances enumerated in the judgment are not conclusive. The circumstances where the Court has categorically held that no recovery shall be effected are reproduced as below :-

> *"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:*
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> *(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."

9. In view of the above, this Court is of the considered view that the case of the present petitioner is squarely covered by the principles and parameters laid down in Clauses (ii), (iii) and (v) of para 12 of the judgment of Hon'ble Supreme Court passed in ***Rafiq Masih's case (Supra)***.

10. So far as the argument raised by the learned State counsel that the petitioner had furnished an undertaking dated 23.09.2009 (Annexures R-1) is concerned, the same is also not sustainable in view of the fact that firstly, the said undertaking was furnished by the petitioner at the time of re-fixation of his pay in the revised pay scales w.e.f. 01.01.2006, whereas the alleged recovery of Rs.4,51,441/-, pertains to the alleged wrongful fixation of the petitioner's pay in the year 2001 and secondly, the said undertaking is a stereotyped undertaking and is also generalized in nature. Therefore, such an undertaking would not be of any avail to the respondent-department. In ***Jagdev Singh's case (supra)***, the Hon'ble Supreme Court was dealing with a particular situation, whereby before granting the benefit of pay-scale to the employees, an undertaking was taken from the employees with regard to the fact that in case there is some recovery which is to be

made thereafter, then the employees will have no objection with regard to the same and in this way, the employees were already put to notice with regard to a specific benefit which was to be conferred upon them. However, in the present case, the benefit has been granted in the year 2001 and the recovery has been ordered to be effected in the year 2020, therefore, the facts and circumstances of the present case are totally distinguishable from the aforesaid judgment in ***Jagdev Singh's case (supra)***.

11. In view of the above, the present petition is allowed and the impugned order dated 22.07.2020 (Annexure P-1) seeking recovery of excess payment of Rs.4,51,441/- from the petitioner, is set aside. Respondent No.4 is directed to refund the amount, if any deducted from the salary/retiral dues, to the petitioner, within a period of 02 months from the date of receipt of certified copy of this order, along with interest @ 6% per annum from the date the same was deducted till its actual payment.

(NAMIT KUMAR)
JUDGE

13.05.2026
Kothiyal

Whether Speaking/reasoned Yes/No

Whether Reportable Yes/No