

CWP-18081 of 2020

2026.PHHC.057580



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

CWP-18081 of 2020

Date of decision: 16.04.2026

Jaswinder Singh and others

....Petitioners

versus

State of Punjab and others

....Respondents

CWP-18099 of 2020

Harjit Singh

....Petitioner

versus

State of Punjab and others

....Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Shubham Chandel, Advocate, and
Mr. Damanpreet Singh, Advocate, for the petitioners.

Mr. Satnampreet Singh Chauhan, DAG, Punjab.

NAMIT KUMAR, J.

1. By way of this order, afore-mentioned two writ petitions are being disposed of as common questions of law and facts are involved therein. For the sake of brevity, facts are being taken from CWP-18081 of 2020.

2. Instant petition has been filed under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for quashing the order dated 28.03.2020 (Annexure P-10), whereby excess amount paid to the petitioners has been ordered to be recovered in 20 equal monthly instalments.

CWP-18081 of 2020

2026.PHHC.057580



3. Briefly stated, the facts of the case are that petitioners No.1 to 4 were initially appointed as Clerks on 18.08.2004, 23.08.2004, 30.11.2005 and 04.04.2005, respectively in the office of respondent No.3. Thereafter, they were given the benefit of ACP on completion of four years of service as Clerks vide order dated 04.12.2008 w.e.f. 18.08.2008 (petitioner No.1), vide order dated 04.12.2008 w.e.f. 23.08.2008 (petitioner No.2), vide order dated 04.05.2012 w.e.f. 30.11.2009 (petitioner No.3) and vide order dated 18.05.2009 w.e.f. 04.04.2009 (petitioner No.4). Thereafter, they were placed in the higher pay scale of Rs.5910-20200 + 2800 grade pay of Junior Assistant vide order dated 19.01.2011 (Annexure P-3). Thereafter, the grade pay of Junior Assistant was enhanced from Rs.3200/- to Rs.3600/- vide notification dated 15.12.2011 issued by the Finance Department of Punjab Government and petitioners were granted the benefit of one annual increment i.e. petitioners No.1 to 3 w.e.f. 19.01.2015 and petitioner No.4 w.e.f. 07.02.2015. Thereafter, the petitioners were issued show-cause notice dated 22.01.2019 (Annexure P-5) for withdrawal of benefit of four years ACP. The petitioners submitted their reply on 11.03.2019 (Annexure P-6) to the said show-cause notice. However, vide order dated 11.04.2019 (Annexure P-7), the benefit of four years ACP granted to the petitioners earlier was ordered to be withdrawn and vide order dated 16.05.2019 (Annexure P-8 Colly), their pay was refixed and thereafter vide order dated 28.03.2020, recovery was ordered against the petitioners on account of excess payment made

CWP-18081 of 2020

2026.PHHC.057580



to them to the tune of Rs.65,556/- each in case of petitioners No.1 to 3 and Rs.64,848/- in case of petitioner No.4. The said order of recovery has been challenged by the petitioners in the present writ petition.

4. Reply by way of affidavit of Sarabjit Singh, Chief Auditor, Co-operative Societies, Punjab, Chandigarh, on behalf of respondents No.1 to 3 has been filed wherein it has been stated as under: -

“3. That brief facts of case are that the petitioners joined the office of Chief Auditor Cooperative Societies as clerk on different dates. Thereafter, the petitioners were given placement from clerk to Junior Assistants vide order dated 19-1-2011. It is pertinent to mention here that, at the time of giving them placement as Junior Assistants, they were given benefit of more than 1 increments.

It is further pertinent to mention here that Junior Assistant and clerk are same cadre. According to the clarification issued by the Punjab Government vide letter no: 7/25/03-5PP1/3586 dated 5-10-2006 and instructions issued by the Personal Department vide letter no: 7/14/88-5PP1/2269/18527 dated 1-12-1988, the benefit of 4 year under ACP scheme was given to petitioners in the year 2015, whereas petitioners were liable for 9 years ACP benefit under ACP scheme after their placement as Junior Assistant.

Thereafter when the error committed came to the notice, the petitioners were subsequently issued show cause notice for withdrawal of undue benefit of 4 year under ACP scheme.

CWP-18081 of 2020

2026.PHHC.057580



That the process regarding recovery of undue benefit, which had caused loss to the state exchequer, was initiated during the month of July 2019, and a committee was formed by respondent no.3 comprising Sh. D.P Sharda (Joint Chief Auditor), Satpal Singh (Establishment Officer), and Ms. Nimmi (BARO) as members. The concerned dealing assistant had assessed the loss caused to the state exchequer due to the undue benefit given to the petitioners. The petitioners had made categorical statement before the committee that they belong to Group C cadre of employees and they had no objection if the 4 year benefit under ACP scheme given to them was withdrawn. They further stated if in future the question of recovery came forth due to any reason, then they would be bound to pay the recovery amount and the DDO would not be responsible. This fact was given down on the noting in the Pay Fixation file and all the petitioners had signed on the noting at page 119 in the said file after admitting the contents of the noting to be true. The true translated copy of noting page 118-120 of pay fixation file is attached as Annexure R-1.

4. *That it is respectfully submitted that in order to effect the recovery from the delinquent official due to whom loss had been incurred to the exchequer, which otherwise would have been the Drawing & Disbursement Officer (DDO), but due to the aforementioned undertaking given by the petitioners the same was effected from the petitioners and order with regard to the same was made vide order dated 28/09/2020.*

CWP-18081 of 2020

2026.PHHC.057580



5. *That it is respectfully submitted that according to the order dated 28-9-2020 the recovery from the petitioners would be made in 20 installments and the recovery would be deducted from the monthly salaries of the petitioners. But the petitioners have intentionally concealed the aforementioned fact from the Hon'ble Court as according to the undertaking given by them, the petitioners have made themselves liable for the recovery of undue benefit of 4 year step up which otherwise was the responsibility of the concerned DDO. The recovery is being rightly effected from the petitioners and the petitioners have intentionally concealed the material fact regarding the undertaking given by them and thus are not entitled to any relief. So therefore writ petition deserves to be dismissed on this ground only."*

5. In nutshell, the stand taken by the respondents is that Junior Assistant and the Clerk are in the same cadre and as per clarification issued by the State Government vide letter dated 05.10.2006 and instructions dated 01.12.1998, the benefit of four years ACP was granted to the petitioners in the year 2015 whereas they were entitled for nine years ACP benefit under the ACP Scheme after their placement as Junior Assistant and when the said error came to their notice, the petitioners were issued show-cause notice for withdrawal of benefit of four years under the ACP Scheme and process regarding recovery was initiated during the month of July, 2019 and a committee was formed by respondent No.3 comprising of three members and the petitioners have made statement before the committee that they belong to Group 'C'

CWP-18081 of 2020

2026.PHHC.057580



cadre and they have no objection if benefit of four years under the ACP Scheme given to them is withdrawn and they further stated, if in future the question of recovery come forth due to any reason, then they would be bound to pay the recovery amount.

6. While issuing notice of motion in the present case on 30.10.2020, recovery of the second instalment from the petitioners was stayed.

7. Learned counsel for the petitioners has submitted that they belong to Group 'C' cadre and since there was no mis-representation or fraud on behalf of the petitioners, therefore, no recovery could have been effected by the respondents. He has placed reliance on the judgment of the Hon'ble Supreme Court in ***State of Punjab and others v. Rafiq Masih (White Washer) and others, 2015(1) SCT 195.***

8. *Per contra*, learned State counsel has submitted that the petitioners have given undertaking before the committee that they have no objection if the benefit of four years under the ACP Scheme is withdrawn and recovery is effected. Therefore, the present case is covered by the judgment of the Hon'ble Supreme Court in ***High Court of Punjab and Haryana and others v. Jagdev Singh, 2016(14) SCC 267.***

9. I have heard learned counsel for the parties and perused the record of the case.

10. Admittedly, the petitioners were given the benefit of four years under the ACP Scheme, which is sought to be withdrawn and

CWP-18081 of 2020

2026.PHHC.057580



recovery of excess amount has been ordered by the respondents vide impugned order. However, there was no mis-representation on the part of the petitioners with regard to grant of aforesaid benefit of ACP Scheme.

11. The Hon'ble Supreme Court in **Rafiq Masih's** case (supra) has issued guidelines with regard to the recovery and in the said judgment, it has been held 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 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.

CWP-18081 of 2020

2026.PHHC.057580



(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.”

12. The facts and circumstances of the present case suggest that the petitioners had not given any undertaking with regard to recovery at the time of grant of benefit of four years under the ACP Scheme nor it was on account of any fraud or misrepresentation of the petitioners. Therefore, the impugned order has been passed in violation of settled law by the Hon’ble Supreme Court in **Rafiq Masih’s** case (supra).

13. No benefit of the judgment in **Jagdev Singh’s** case (supra) relied upon by learned State counsel can be given to the respondents as in the said case the employee had given undertaking while opting for and getting payment of arrears on account of revised pay scale to refund any excess payment made to him in case he was not found entitled to any part thereof.

14. In view of the above, present petition is allowed. Respondents are directed to refund the amount, if any recovered from the petitioners, within a period of two months from the date of receipt of certified copy of this order.

16.04.2026
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No