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

**CWP-30149-2024
DECIDED ON: 10.04.2026**

OM PRAKASH

.....PETITIONER(S)

VERSUS

STATE OF HARYANA AND ORS

....RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sandeep Thakan, Advocate for the petitioner(s)

Ms. Ruchi Sekhri, Addl. A.G., Haryana

SANDEEP MOUDGIL, J

Prayer

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking quashing of the impugned show cause notice dated 30.08.2024 (Annexure P-2) passed by respondent no. 3 and directing the respondents to release the pension and other retiral benefits along with interest of 24% per annum.

Brief Facts

2. The petitioner is a retired government employee who served in the Indian Army from 22.03.1985 to 31.08.2005 and thereafter joined the Sainik & Ardh Sainik Welfare Department, Haryana as a Clerk on 02.05.2006. He was promoted to the post of Head Clerk on 05.01.2021 and retired on 31.08.2024 upon attaining the age of superannuation.

3. Upon retirement, the petitioner became entitled to pensionary benefits including pension, gratuity, leave encashment, and commutation. No departmental inquiry or proceedings were pending against him at the time of retirement.

4. The respondents did not release the petitioner's pensionary benefits. Instead, a show cause notice dated 30.08.2024 was issued proposing recovery of ₹4,38,457/- allegedly on account of excess payment.

5. The petitioner submitted a reply to the show cause notice denying any misrepresentation or fraud on his part and contending that the alleged excess payment, if any, was not attributable to him. However, the respondents proceeded to deny the petitioner's claim for release of pensionary benefits.

6. Hence, this petition.

<u>Contentions</u>

<u>On the behalf of petitioner</u>

7. Learned counsel contends that the impugned show cause notice proposing recovery of ₹4,38,457/- and the consequent withholding of retiral benefits are wholly illegal, arbitrary, and contrary to settled principles of law, particularly as the petitioner has already retired from service.

8. It is argued that the petitioner, being a Class-III employee, did not commit any fraud, misrepresentation, or concealment of facts at any stage, and therefore any alleged excess payment, if made, was solely on account of an error attributable to the respondent-department, while further submitting that in the absence of any misconduct or pending disciplinary proceedings, the respondents have no authority in law to withhold pension, gratuity, leave encashment, or other retiral dues of the petitioner.

9 It is further contended that recovery from a retired employee is impermissible in law, especially where the alleged excess payment pertains to a period long prior to retirement and was not obtained by any wrongful act of the employee. Learned counsel relies on settled judicial precedents to argue that recovery from retired employees or employees nearing retirement is inequitable and legally unsustainable, particularly when such recovery would cause undue hardship.

10. Counsel further argues that the withholding of retiral benefits, which are a statutory right of the petitioner, amounts to an unjust deprivation of property and livelihood, and is thus violative of Articles 14 and 16 of the Constitution of India.

On behalf of the Respondents

11. The written statement dated 11.09.2025 has been filed by Mr. Sanjay Joon, Director General on behalf of respondents no, 1 to 4, whereby it is contended that while the petitioner was serving as Clerk at District Sainik and Ardh Sainik Welfare Office, Narnaul, his pay was erroneously fixed vide Memo dated 28.02.2018 by the then District Sainik and Ardh Sainik Welfare Officer, Lt. Col. Sarita Yadav. It is argued that the said officer was not the competent authority to fix or revise the petitioner's pay, as such power vests exclusively with the Head of Department, i.e., the Director/Director General. Further, even the SAS cadre officer who verified the said fixation lacked the requisite competence.

12. It is further submitted that no communication regarding such enhancement of pay was ever received at the Head Office till 25.04.2023. Consequently, the petitioner continued to draw an inflated basic pay of Rs.

37,500/- instead of Rs. 29,600/-, resulting in an excess drawal of Rs. 7,900/- per month. Upon detection of this irregularity, the Accounts Branch rectified and re-fixed the petitioner's pay vide order dated 25.04.2023.

13. Learned counsel further submits that although the petitioner's pay was subsequently stepped up notionally to bring it at par with his junior, the exercise revealed that an excess amount of Rs. 4,38,457/- had already been paid to the petitioner, to which he was not legally entitled. It is on this basis that the impugned show cause notice was issued, which is stated to be legal, justified, and in consonance with statutory provisions.

14. It is also contended that the petitioner's retiral dues have not been withheld arbitrarily. Rather, pensionary benefits, including leave encashment and gratuity, have already been sanctioned and credited to his account by the competent authority.

Lastly, learned counsel submits that the erroneous pay fixation appears to be the result of procedural lapses at the district level. Since the officer responsible for the initial fixation has since expired, disciplinary proceedings have been initiated against other concerned officials, including the petitioner, under the applicable service rules.

Analysis

12. On a careful consideration of the record and the rival submissions, this Court finds that the action of the respondents, in seeking recovery from the petitioner, cannot be sustained either in law or on equitable considerations. The foundation of the respondents' case is an admitted position that the alleged excess payment arose on account of an error in pay fixation by the department itself.

There is no allegation, much less any material, to suggest that the petitioner was guilty of misrepresentation, fraud, or concealment. The mistake is entirely attributable to the administrative machinery. To fasten the consequences of such an error upon the petitioner would be manifestly unjust.

13. The Apex Court while dealing with the issue of recovery of benefits accrued upon employees, in ***Sahib Ram v. State of Haryana 1994(5) SLR 753*** and ***Purshotam Lal and others v. State of Bihar and others, 2007(1) RSJ 150***, answered the question in the negative and held that no recovery could be made if the employee was not himself responsible for any fraud or misrepresentation in the grant of the benefit. Guidance may also be derived from the judgment of this court in ***Budh Ram v. State of Haryana 2009(3) SCT 333***

> *Having gone through the averments made in the writ petitions, we are of the opinion that we also need not set out in detail the factual matrix in which the question referred to us arises for consideration for determination especially when the facts appear to us to be peculiar to each case forming part of this Bunch. Having said so, the question referred to us can in our opinion be seen from three distinct dimensions. These are :-*
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> > *i) Cases in which the benefits sought to be recovered from the employees were granted to them on the basis of any fraud, misrepresentation or any other act of deception;*
> >
> > *ii) Cases in which the benefits sought to be recovered were granted on the basis of a* ***bonafide mistake*** *committed by the authority granting the same while applying or interpreting a provision contained in the service rule, regulation or any other memo or circular authorising such grant regardless whether or not grant of benefits involved the performance of higher or more onerous duties by the employee concerned;*

> *iii) Cases that do not fall in either one of the above two categories but where the nature of the benefit and extent is so unconnected with his service conditions that the employee must be presumed to have known that the benefit was flowing to him undeservedly because of a mistake by the authority granting the same.*
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> *Dealing with category ii,*
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> *Cases involving recovery of benefits received by the employees on account of misrepresentation or erroneous application of rules, regulations, circulars or instructions issued by the Government have often come up before the Courts including the Apex Court. The consistent view taken as regards the recovery of such benefits erroneously extended to the employees without the employee being, in any way, guilty of any fraud, misrepresentation or deception is that such recovery would be unfair inequitable and against justice and good conscience.*

14. Moreso, this court cannot ignore the fact that the case of the petitioners is squarely covered by the principles laid down in ***State Of Punjab & Ors vs Rafiq Masih (White Washer) AIR 2015 SUPREME COURT 696***, wherein the Supreme Court has held that recovery from retired employees, or employees due to retire within one year, of financial benefits wrongly extended without their fault, would be arbitrary and inequitable. This Court is conscious of the divergence of judicial opinion on the issue of recovery of financial benefits erroneously extended to government servants. One line of authority, as noticed in ***Syed Abdul Qadir v. State of Bihar (2009) 3 SCC 475*** and ***Rafiq Masih (supra)***, has consistently answered the question in the negative, holding that no recovery can be made from an employee if he was not himself responsible for any fraud, misrepresentation, or suppression of material fact in the grant of such benefit. The underlying rationale is founded in equity and fairness, recognizing that an

employee who has planned his affairs and drawn his subsistence based upon benefits extended by the State for decades ought not to be visited with harsh financial consequences, particularly after retirement, for no fault of his own. However, the other line of decisions, proceeds on the principle that the State exchequer cannot be made to suffer on account of an administrative error, and that no person should be allowed to unjustly enrich himself by retention of benefits to which he was not legally entitled.

15. This Court is persuaded by the enunciation in ***Rafiq Masih (supra)*** wherein the Supreme Court, carved out a nuanced principle that while the State may, in general, recover wrongful payments, such recovery would be impermissible and inequitable in cases where the employee is not guilty of misrepresentation, has long since retired or is on the verge of retirement, or where the recovery would cause undue hardship. Relevant paragraph of the same is 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 :*
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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."*

16. The case at hand squarely falls within that protective ambit since the petitioners neither practiced fraud nor misled the authorities and the benefits flowed from regularization orders passed by the competent authority and acted upon for decades and thus, to now fasten liability upon them would be a travesty of justice. This Court also cannot overlook the disproportionate impact that such recovery would have on the petitioner. A retired employee, dependent on fixed pensionary benefits, cannot reasonably be expected to refund a substantial sum after the cessation of service. The financial burden, in such circumstances, would fall far more heavily upon the individual than any corresponding loss to the State. The balance of equities, therefore, clearly leans in favour of the petitioner. The State, as a model employer, is expected to act with fairness and not in a manner that imposes undue hardship.

17. Equally significant is the delay with which the respondents have sought to initiate recovery. The alleged incorrect pay fixation dates back several years, yet no corrective steps were taken until shortly before or after the petitioner's retirement. Such belated action, without any satisfactory explanation, cannot be countenanced. The law does not permit the State to reopen settled matters after a long lapse of time and impose liability upon an employee who had no role in the alleged error.

18. The contention of the respondents that public funds must be safeguarded does not justify the present action. While the protection of public

exchequer is undoubtedly a legitimate concern, it cannot override the principles of fairness and equity, particularly where the employee is blameless. The appropriate course for the State would be to examine accountability within its own administrative framework, rather than to recover the amount from a retired employee.

Conclusion

19. In view of the foregoing, this Court holds that the impugned show cause notice dated 30.08.2024 (Annexure P-2), insofar as it seeks recovery of the alleged excess payment, is unsustainable in law and the same is accordingly quashed.

20. The present writ petition is allowed, and the respondents are directed to ensure that no recovery is effected from the petitioner and the amount of Rs. 4,38,457/- withheld by the respondents, from the petitioner's retiral dues, shall be released along with an interest of 6% per annum within a period of 3 weeks from the date of receipt of certified copy of this order.

21. Pending application(s), if any shall disposed off.

(SANDEEP MOUDGIL)
JUDGE

10.04.2026
Meenu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No