



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

**CWP-10414-2000 (O&M)
Date of Decision : 22-04-2025**

ROSHAN LAL SHARMA AND ORS. Petitionerss

VERSUS

STATE OF PUNJAB & ORS Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the petitioners.

Ms.Akshita Chauhan, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the orders passed by the respondents which have been attached as Annexure P-9 to Annexure P-13 by which, apart from re-fixing the salary of the petitioners on account of it being wrongly fixed earlier, the recovery of the excess amount paid was being done by the respondents.

2. Upon notice of motion, the order of recovery of the excess amount was stayed.

3. The writ petition was filed in the year 2000 and 25 years have passed but no one has appeared of the petitioners.

4. Upon notice of motion, the respondents have filed the reply wherein it has been stated that inadvertently, the pay scale of Rs.3000-4000/-

had been granted to petitioners instead of Rs.2200-4000, which discrepancy has been corrected by the respondents while passing the impugned orders and as the petitioners has been paid more than he is entitled to, the excess amount paid to petitioners was sought to be recovered by way of orders impugned.

5. I have heard learned counsel for the respondents and have gone through the records of the present case with his able assistance as no one has put in appearance on behalf of the petitioners.

6. Keeping in view the fact that as per Rules, the benefit of pay scale of Rs.2200-4000/- was to be given to an employee who had completed 8 years in service starting from 01.01.1986 hence, the pay of the petitioners has been refixed by the respondent.

7. The question which arises for consideration is whether, the excess amount paid to the petitioners can be recovered from him especially when the pay was fixed by the respondent themselves. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***, no recovery of excess payment can be done after withdrawing an undue benefit which an employee has been continuously receiving for a period of five years before the same was withdrawn. The relevant paragraph of the said judgment 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:-

(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. Learned counsel for the respondents has not been able to dispute the fact that the excess benefit to the petitioners was granted w.e.f 01.01.1986 whereas the impugned orders were passed in the year 2000, i.e. after a period of 14 years hence, the recovery of the excess amount paid to the petitioners could not have been done by the respondents keeping in view the above mentioned judgment.

10. Furthermore, the Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala***

and others, decided on 02.05.2022, has held that where an employee has not been at fault with regard to the extension of excess benefit that he/she has received and there has been no mis-representation and fraud on behalf of the employee concerned to get the emoluments beyond his/her entitlement, the recovery of the excess amount received by that employee cannot be made. The relevant paragraph of the said judgment is as 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.”

11. Keeping in view the above, though the order qua the re-fixation of the salary of the petitioners as per the governing rules, is upheld but no recovery of the excess amount received by petitioners will be done by the respondent.

12. The present petition is allowed in the above terms.
13. Pending application, if any, also stands disposed of.

22-04-2025

Sapna Goyal

(HARSIMRAN SINGH SETHI)

JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO