

**CWP-7269-2020 (O&M) and  
other connected matters**

2025:PHHC:032341



**1**

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH  
(Sr. No. 292)**

**(1) CWP-7269-2020 (O&M)  
Date of Decision : 03.03.2025**

**Jaswinder Singh and others**  
**...Petitioners**

**Versus**

**The High Court of Punjab and Haryana, Chandigarh**  
**...Respondent**

**(2) CWP-13917-2020 (O&M)**

**Gopal Singh and others**  
**...Petitioners**

**Versus**

**The High Court of Punjab and Haryana, Chandigarh**  
**...Respondent**

**(3) CWP-7266-2020 (O&M)**

**Pammi and others**  
**...Petitioners**

**Versus**

**The High Court of Punjab and Haryana, Chandigarh**  
**...Respondent**

**(4) CWP-11477-2020 (O&M)**

**Ravi Shankar Pandit and others**  
**...Petitioners**

**Versus**

**The High Court of Punjab and Haryana, Chandigarh**  
**...Respondent**

**(5) CWP-6650-2020 (O&M)**

**Ram Parshad**  
**...Petitioner**

**Versus**

**CWP-7269-2020 (O&M) and  
other connected matters**

2025:PHHC:032341



2

**The High Court of Punjab and Haryana, Chandigarh**

**...Respondent**

**(6)**

**CWP-6885-2021 (O&M)**

**Kali Ram and others**

**...Petitioners**

**Versus**

**The High Court of Punjab and Haryana, Chandigarh**

**...Respondent**

**(7)**

**CWP-4128-2021 (O&M)**

**Dheer Singh and another**

**...Petitioners**

**Versus**

**High Court of Punjab and Haryana, Chandigarh**

**...Respondent**

**(8)**

**CWP-9168-2021 (O&M)**

**Prem Kumar**

**...Petitioner**

**Versus**

**The High Court of Punjab and Haryana, Chandigarh**

**...Respondent**

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. Puneet Gupta, Advocate and  
Mr. Ravindra Singh, Advocate for the petitioners  
in CWP-7269-2020 and CWP-6650-2020.

Mr. R.K. Chaudhary, Advocate for the petitioners  
in CWP-7266-2020.

Mr. Dinesh Kumar, Advocate and  
Ms. Shikha Singla, Advocate for the petitioner  
in CWP-9168-2021.

Mr. Nitish Bansal, Advocate for the petitioners  
in CWP-4128-2021.

Mr. Surinder Singh, Advocate for the petitioners  
in CWP-6885-2021.



Mr. Kanwal Goyal, Advocate for the respondent-High Court  
in CWP-7269-2020 and CWP-13917-2020.

Mr. Kanverpal Singh Gill, Advocate for  
Mr. Dhiraj Chawla, Advocate for the respondent-High Court  
in CWP-6885-2021, CWP-9168-2021 and CWP-4128-2021.

Ms. Sukriti Gupta, Advocate for the respondent-High Court  
in CWP-6650-2020 and CWP-11477-2020.

Mr. Vikas Chatrath, Advocate with  
Ms. Preet Agroa, Advocate and  
Mr. Sachit Katoch, Advocate for the respondent-High Court  
in CWP-7266-2020.

\*\*\*

**Harsimran Singh Sethi J. (Oral)**

1. By this common order, eight writ petitions, the details of which have been given in the heading, are being decided as all these petitions involve the same question of law on similar facts.

2. In the present bunch of petitions, the grievance of the petitioners is that their pay has been revised by the respondents and after the revision, the recovery has been ordered and that too in a selective manner.

3. Learned counsel for the petitioners submits that the pay of the petitioners was fixed by the respondents as per the Notification issued in the year 2011 and the petitioners continued to receive the said re-fixed salary, which was fixed by the respondents on their own without there being any input by the petitioners and now, the said pay is again being re-fixed to the detriment of the petitioners and the recovery of the excess payment has also been ordered to be done starting from 01.01.2018, which action on the part of the respondents is arbitrary and illegal.



4. Learned counsel for the petitioners submits that no recovery of excess payment can be done from a Class-III or a Class-IV employee, especially when there is no misrepresentation on the part of the employee concerned qua the fixation of their salary, which has now been re-fixed by the respondents.

5. Learned counsel for the respondents submits that the re-fixation of the salary of the petitioners has been done on the basis of the Instructions dated 01.01.2018 (Annexure R-2) issued by the Government of Punjab and keeping in view the said Instructions, till the date of the Instructions issued by the Government of Punjab, no recovery is to be done but as, the Instructions were issued by the State of Punjab on 01.01.2018, the recovery is being done starting from 01.01.2018 though, it is a conceded fact that the order re-fixing their salary was passed starting from the year 2019 onwards.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. The question which arises for determination in the present bunch of petitions is whether, any amount paid in excess to an employee, who is working on a Class-III or a Class-IV post, can be recovered in case there is no fraud played by the said employee so as to get the amount beyond his/her entitlement.

8. The said question of law has been decided 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*. 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. A bare perusal of the above reproduction shows that no recovery of an excess amount paid can be done from a Class-III and Class-IV employee. It is a conceded position that in the present petitions, the petitioners are working on a Class-III and Class-IV post as the case may be, hence, the above said judgment covers their cases with regard to non-recovery of the excess amount paid to them.



10. Not only this, the revised pay was paid to the petitioners from the year 2013 onwards whereas, the recovery order has been passed starting from the year 2019 which also shows that the amount was paid to them for more than a period of five years, which even otherwise also, as per the reproduction of the judgment is the ***Rafiq Masih's case (supra)***, cannot be recovered.

11. Learned counsel for the respondents has not been able to rebut the application of the judgment in ***Rafiq Masih's case (supra)*** upon the petitioners to their benefit.

12. Even otherwise, as per the judgment of 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, the recovery of the excess amount paid cannot be done from an employee where there is no misrepresentation or fraud played by the employee concerned to get the excess amount than his/her entitlement. 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.”*

13. In the present case, the pay of the petitioners was fixed by the respondents themselves and nothing has come on record that the petitioners were in any way responsible for the fixation of their pay or they misrepresented or played fraud upon the respondents. In the absence of such averment made, the excess amount paid to the petitioners cannot be recovered.

14. Learned counsel for the respondents by placing reliance upon the judgment in *Thomas Daniel (supra)*, contends that if it is proved that the employee had a knowledge that the payment was received in excess what was due, the same can be recovered.

15. It may be noticed that nothing has come on record that petitioners were ever made aware of the Notification dated 01.01.2018, which was issued by the State of Punjab. Further, after the adoption of the Notification dated 01.01.2018 issued by the State of Punjab, by the High Court, the revision was done of the pay scale by the High Court only after a period of one and half year. Nothing has come on record as to what prevented the High Court from implementing the Notification dated 01.01.2018 immediately upon the adoption of the same.



16. Once, the pay scale of the petitioners was never revised by the High Court despite adopting the Notification dated 01.01.2018 for a period of more than one and half year, the petitioners cannot be made liable that they should have come forward for revision of their pay. The duty to revise the pay was on the High Court, which was only done starting from the year 2019 onwards whereas, the recovery is being effected from 01.01.2018, hence, the objection being taken by the High Court that the more pay was drawn by the petitioners despite notice, is not made out from the facts and circumstances of the present case.

17. Further, it may be noticed that in case, any recovery is to be done from an employee, a show cause notice has to be given to the employee concerned as the same causes financial prejudice to the employee but in the present case, no show cause notice was issued to the petitioners even while revising the pay of the petitioners or at the time of effecting the recovery. The High Court has not produced any order before this Court that before effecting the recovery from the petitioners, the rules of natural justice were followed so as to seek the response of the employee concerned qua the recovery to be made especially in view of the judgment of the Hon'ble Supreme Court of India in ***Rafiq Masih's case (supra)*** and ***Thomas Daniel's case (supra)***.

18. It is a settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 2265 of 2011 titled as ***Chamoli District Co-operative Bank Ltd through its Secretary/Mahaprandhak and another vs. Raghunath Singh Rana and others***, 2016(12) SCC 204, decided on



17.05.2016 and in Civil Appeal No. 9417 of 2019 titled as ***M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another*** 2019 (12) JT 283, decided on 13.12.2019 that where any order passed by the authority concerned causes prejudice to an employee, especially financial liability, an opportunity of hearing is must and no order causing prejudice to an employee can be passed by an employer unilaterally. The relevant para of ***Daffodills Pharmaceuticals's case (supra)*** is as under:-

*“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.*

*16. The High Court, in the opinion of this court, fell into error in holding that in matters of award of public contracts, the scope of inquiry in judicial review is limited. Granted, such jurisdiction is extremely circumscribed; no doubt the court had refused to grant relief to Daffodils against its plea of wrongful rejection of its tender. However, what the impugned judgment clearly overlooks is that the action of the state, not to procure indefinitely, on an assumption of complicity by Daffodils, was in flagrant violation of principles of natural justice.”*



The relevant paragraph of the *Chamoli's case (supra)* is as under:-

*“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry. The Apex Court in [Sur Enamel and Stamping Works Pvt. Ltd. v. Their Workmen](#) reported in (1964) 3 SCR 616 has laid down following:-*

*“... An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined – ordinarily in the presence of the employee – in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the inquiry officer records his findings with reasons for the same in his report.”*

19. Keeping in view the law cited here-in-before, it is clear that the recovery was done from the petitioners by violating the settled principle of law noticed here-in-before and hence, even on this ground, the recovery effected from the petitioners cannot be allowed and is accordingly set-aside.

20. Further, the respondents have themselves stated in the written statement that no recovery will be done till 01.01.2018 qua the excess amount paid. Nothing has come on record that in case the recovery of the excess amount paid upto 31.12.2017 cannot be done, then why the same is being done from 01.01.2018, especially when the recovery orders were



passed in the year 2019. The argument of the learned counsel for the respondents that the recovery was ordered by the State of Punjab starting from 01.01.2018, hence, the same has been made applicable, cannot be accepted.

21. Once, the respondents despite the Notification by the Government of Punjab allowed the benefit of re-fixation without any modification, as done in the year 2013, the recovery cannot be made from the petitioners till the passing of any order re-fixing their salary.

22. Keeping in view the facts and circumstances of the present case as well as the settled principle of law, the present petitions are accordingly allowed. Till the actual orders of the re-fixation of the salary of the petitioners are passed, no recovery upto the said date will be done by the respondents. In case, any recovery has already been done prior to date when the salary of the petitioners was re-fixed, the same be refunded back to the petitioners within a period of eight weeks from the date of receipt of copy of this order. It is clarified that the order re-fixing the salary of the petitioners will be maintained as there is no challenge to the same.

23. At this stage, learned counsel for the respondents submits that the present order may kindly be limited to the employees who have approached this Court and the recoveries made from the other employees be allowed to be retained.

24. It may be noticed that once the jurisdiction is being exercised by this Court under Article 226 of the Constitution of India, all the employees are to be treated on the same footing irrespective as to whether, they have



challenged the recovery or not. Once, it is being held that the recovery of the excess amount paid to Class-III and Class-IV employees was arbitrary, illegal and contrary to the settled principle of law, the relief needs to be given to all the employees irrespective of the fact that whether they are petitioners or not. In case, the relief is not granted to everyone, the other employees will also be forced to approach this Court for the grant of same relief.

25. The Division Bench of this Court while passing order in CWP No. 4382 of 2002 decided on 21.03.2002 titled as *Satbir Singh Vs. State of Haryana*, has held that where the question of law has been settled and benefit has been given, the same needs to be extended to all. The relevant paragraph of the said judgment is as under :-

*“11. State has pervasive obligations to discharge in relation to maintaining its expected standards of employer employee relationship. As already noticed, one of the important facets of such obligations is to be reasonable and fair in granting service benefit to its employees in accordance with service rules and the principles enunciated on pronouncement of judgments by the Courts. When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater*



*emphasis of its application in the day-to-day affairs of the State.*  
*In the case of Dr.(Mrs.) Santosh Kumari v. Union of India and others, JT 1994(7) SC 565: 1995 (1) SCT 527 (SC) the Hon'ble Apex Court held as under:-*

*“The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the Court. A more deserving candidate may not have the means of approach the Court.”*

26. Keeping in view the totality of the facts and circumstances of the present case, it is directed that the benefit be given to all the employees of this Court from whom the recovery was done in the similar fashion as done from the petitioners herein and in case, any recovery has been done from any of the employee contrary to the settled principle of law, the same be refunded back to him/her and the benefit will not be denied on the ground that he/she was not party to the present petitions.

27. Petitions are allowed in above terms.

28. Pending miscellaneous application, if any, also stands disposed of.

29. A photocopy of this order be placed on the file of connected cases.

March 03, 2025  
kanchan

(HARSIMRAN SINGH SETHI)  
JUDGE

*Whether speaking/reasoned : Yes*

*Whether reportable : No*