



**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH.**

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**LPA-1985-2025 (O&M).  
Date of Decision: 04.09.2025.**

Punjab State Electricity Regulatory Commission, PSERC

....Appellant.

VERSUS

Lt. Col. Ashok Bembey and another

....Respondents.

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**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL  
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

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**Present:** Ms. Gargi Kumar, Advocate for the appellant  
(Through Video Conferencing).

Respondent No.1 (Lt. Col. Ashok Bembey (Retd.)) in person.

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**ANUPINDER SINGH GREWAL, J. (Oral)**

The appellant has impugned the judgment dated 04.10.2024 passed by the Single Bench, whereby the writ petition preferred by the respondent challenging the recovery of the alleged excess payment of salary, has been allowed. The appellant has also impugned the order dated 29.04.2025 of the Single Bench whereby the application preferred by it for recalling the judgment dated 04.10.2024 has been dismissed.

2. Learned counsel for the appellant-PSERC submits that respondent No.1 is an Ex. Serviceman and was drawing pension from the Indian Army and, therefore, on his re-employment with the appellant, the pension ought to have been deducted from the salary being paid to him. An excess amount of approximately Rs.3,93,461/- had been paid to respondent No.1 and the appellant was within its rights to recover the same.

3. Respondent No.1, who appears in person, submits that he had retired from the Indian Army as a Lieutenant Colonel, after serving for almost 25 years and is presently 76 years old. He was appointed as Deputy Director (Media and House Keeping) by the appellant and had served as such from March, 2002 to March, 2014. The appellant-PSERC had erroneously sought to recover an amount of approximately Rs.3,93,461/- from his pensionary benefits on account of alleged excess payment, but there was no excess payment. He further submits that in terms of Clause A(b) of the Government instructions dated 23.01.1992 with regard to fixation of pay of re-employed pensioner on re-employment, his initial pay was to be fixed at the minimum of the pay scale of the re-employed post and he was also permitted to draw separately any pension sanctioned to him and to retain any other form of retiral benefits.

4. Heard.

5. Admittedly, respondent No.1 had retired as Lieutenant Colonel from the Indian Army. He had been appointed as Deputy Director (Media and House Keeping) by the appellant on 28.02.2002 (Annexure P-1) after his name was recommended by Punjab Ex-Servicemen Corporation. On his re-employment with the appellant, the pay of respondent No.1 was initially fixed in terms of Clause A(a) of the instructions issued by the State of Punjab on 23.01.1992 (Annexure P-6) and accordingly, the gross pension was deducted from the salary being paid to him. It appears that only after two other ex-servicemen re-employed with the appellant, moved a representation seeking re-fixation of their pay in view of Clause A(b) of the instructions dated 23.01.1992, the appellant vide letter dated 05.07.2011 (Annexure P-7) had communicated to respondent No.1 that he could opt for re-fixation of his pay

in terms of the instructions. The relevant extract of the instructions dated 23.01.1992 are reproduced hereunder:-

**“(A) Fixation of pay of re-employed pensioners**

(a) *In the case of civilian pensioners, the initial pay (i.e. basic pay) on reemployment will be fixed at the same stage in the scale of pay of the post in which he is re-employed (hereinafter called the re-employed post) as the last pay (i.e. basic pay) drawn before retirement in the scale of pay of the post held by him before retirement and if there is no such stage in the re-employed post, the pay will be fixed at the stage above that pay. If the last pay drawn is more than the maximum of the scale of pay in which the pensioner is re-employed, the initial pay will be fixed beyond the maximum of the scale in the manner indicated above at the appropriate stage in the master scale of Rs.750-20-950-25-1200-30-1560-40-2000-50-2400-60-2700-75-3000-100-4000-125-5000-150-5900-200-6700 which may be extended upto seven thousand and three hundred rupees and the increment(s) beyond the maximum of the scale will be treated as ex-gratia increment(s). If the re-employed post carried a scale of pay other than the State Scales i.e., a U.G.C. scale or other such scale, the appropriate stage in this case will be the stage falling on the grant of ex-gratia biennial increments beyond the maximum of that scale). Similarly, if the minimum of the scale of pay in which a civilian pensioner is re-employed is more than the last pay drawn by him before retirement, the initial pay will be fixed at the minimum of the scale of pay of the re-employed post. However, in all these cases, the pension prior to commutation (hereinafter called the pension) will be reduced from the initial pay so fixed. He will be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.*

(b) *In the case of an ex-serviceman pensioner, the initial pay (i.e. basic pay) on re-employment will be fixed at the minimum of the scale of pay of the re-employed post. He will be permitted to*

*draw separately any pension sanctioned to him and to retain any other form of retirement benefits.”.*

Respondent No.1 exercised his option for re-fixation of his pay (Annexure P-8) and his pay was re-fixed. Thereafter, vide orders dated 13.02.2012 (Annexure P-9) and 07.03.2012 (Annexure P-12), the appellant had sought to recover the excess amount of Rs.3,93,461/- (approximately) from respondent No.1 on account of alleged excess payment (Annexure R-4).

6. Aggrieved, respondent No.1 filed writ petition bearing CWP No.5862 of 2012 seeking quashing of orders dated 13.02.2012 (Annexure P-9) and 07.03.2012 (Annexure P-12), and vide interim order dated 29.03.2012, the recovery was stayed. The writ petition was allowed by the Single Bench vide the impugned judgment. The Single Bench has relied upon the judgment of the Supreme Court in the case of **State of Punjab vs Rafiq Masih (White Washer), (2015) 4 SCC 334**, wherein it has been held that any amount which has been paid to the employee without any misrepresentation or fraud on part of the employee, cannot be recovered from the employee after his retirement. The Single Bench has also referred to the judgment of this Court in the case of **Krishan Kumar Singla vs. State of Punjab and others, 2010 SCC OnLine P&H 8308**.

7. Although, it has been orally submitted before us by learned counsel for the appellant-P SERC that on re-employment of respondent No.1 with the appellant, the pension ought to have been deducted from the salary being paid to him, however, a contrary stand has been taken by the appellant in the pleadings. Therein, it is pleaded and admitted that it is only after two other ex-servicemen re-employed with the appellant moved a representation seeking re-fixation of their pay in view of Clause A(b) of the instructions

dated 23.01.1992, that the appellant in 2010 realised their mistake and after seeking option from respondent No.1, re-fixed his pay. After consideration of his salary accounts, pension amounting to Rs.7,35,254/- was refunded to respondent no.1 in two instalments. Vide orders dated 13.02.2012 (Annexure P-9) and 07.03.2012 (Annexure P-12), the appellant sought to recover the excess amount of Rs.3,93,461/- (approximately) from respondent No.1 on account of alleged excess payment. It has further been pleaded that the appellant-PSERC has now reworked the amount recoverable from respondent no.1, which has been quantified at Rs.2,78,641/- and the judgment of the Supreme Court in the case of **State of Punjab vs Rafiq Masih (White Washer), (2015) 4 SCC 334** is not applicable in the present case.

8. It is manifest that in terms of the aforesaid instructions, at the time of his re-employment, respondent No.1 being an ex-serviceman pensioner, would be entitled to fixation of his initial pay at the minimum of the pay scale of the post of Deputy Director (Media and House Keeping) and would also continue to draw his pension and other retiral benefits as permissible, from the Indian Army.

9. Learned counsel for the appellant has not been able to point out any other instructions or rules which would be applicable to the case of respondent No.1 and would justify the recovery of the alleged excess payment on the ground that on his re-employment, pension drawn by respondent No.1 ought to have been deducted from his pay.

10. It is not in dispute that the excess payment occurred due to a misapplication of the instructions dated 23.01.1992 by the appellant and there was no misrepresentation or fraud on behalf of respondent no.1. The appellant realised its mistake only in 2010/2011, i.e., about 9 years after respondent

no.1 joined as Deputy Director in 2002. This Court, vide interim order dated 29.03.2012, had stayed the recovery. Today, he is 76 years old. The only question now before us, is whether the amount already paid to respondent no.1 can be recovered from him, although, he has not in any way contributed to such erroneous interpretation nor has he committed any fraud, misrepresentation, deception to obtain the grant of such benefit.

11. A Full Bench of this Court in ***Budh Ram & Others vs. State of Haryana & Others***,(2009) 122 FLR 1053 (P&H) (FB), observed as follows:

**“Having said so, the question referred to us can in our opinion be seen from three distinct dimensions. These are:-**

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 authorizing 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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***Cases falling in Category (ii)***

*Cases involving recovery of benefits received by the employees on account of misapplication 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. In Bihar State Electricity Board and another v. Bijay Bahadur and another, (2000) 10 SCC 99, even when their Lordships recorded a finding that the employee did not possess the requisite qualification for the benefit granted to him and was not, therefore, entitled to any relaxation of the Rules held that it would be against the concept of fairness, equity, justice and good conscience to recover the amount received by him in consequence of the benefit granted to him. Concurring with the observations made by their Lordships' in **Sahib Ram's case (supra)**, the Court observed:-*

*“We do record our concurrence with the observations of this Court in Sahib Ram case (supra) and come to the conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances.”*

*In **Sahib Ram's case (supra)**, referred to earlier, also the employee did not possess the requisite qualification but had received the salary on revised scales. Their Lordships however, held that the benefit flowing to the employee was not on account of any misrepresentation but on account of legal construction made for which the employee cannot be found fault with. The Court observed:-*

*“Admittedly the appellant does not possess the required educational qualifications. Under the circumstances, the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot*

*be held to be at fault. Under the circumstances, the amount paid till the date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”*

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*It is in the light of the above pronouncement, **no longer open to the authorities granting the benefits, no matter erroneously, to contend that even when the employee concerned was not at fault and was not in any way responsible for the mistake committed by the authorities, they are entitled to recover the benefit that has been received by the employee on the basis of any such erroneous grant. We say so primarily because if the employee is not responsible for the erroneous grant of benefit to him/her, it would induce in him the belief that the same was indeed due and payable. Acting on that belief the employee would, as any other person placed in his position arrange his affairs accordingly which he may not have done if he had known that the benefit being granted to him is likely to be withdrawn at any subsequent point of time on what may be then said to be the correct interpretation and application of rules. Having induced that belief in the employee and made him change his position and arrange his affairs in a manner that he would not otherwise have done, it would be unfair, inequitable and harsh for the Government to direct recovery of the excess amount simply because on a true and correct interpretation of the rules, such a benefit was not due. It does not require much imagination to say that additional monetary benefits going to an employee may not always result in accumulation of his resources and savings. Such a benefit may often be utilized on smaller luxuries of life which the employee and his family may not have been able to afford had the benefit not been extended to him. The employees can well argue that if it was known to them that the additional benefit is only temporary and would be recovered back from them, they would not have committed themselves to any additional expenditure in their daily affairs and would have cut their coat according to their cloth. We have, therefore, no hesitation in holding that **in case the employees who are recipient of the benefits*****

*extended to them on an erroneous interpretation or application of any rule, regulation, circular and instructions have not in any way contributed to such erroneous interpretation nor have they committed any fraud, misrepresentation, deception to obtain the grant of such benefit, the benefit so extended may be stopped for the future, but the amount already paid to the employees cannot be recovered from them."* (emphasis supplied)

12. The observations made by Full Bench in *Budh Ram's case (supra)* was followed in *Krishan Kumar Singla's* case (supra). Similarly, the Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (White Washer)*, (2015) 4 SCC 334, has held as under:

*"While it is not possible to postulate all situations of hardships where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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."* (emphasis supplied)

13. It is manifest that there was no fraud, misrepresentation, deception by respondent no.1 to obtain the grant of such benefit. Moreover, the recovery orders have been passed about 10 years after the excess payment was first made. Applying the principles culled out from the aforesaid judgments to the present

case, we are of the considered view that the purported recovery to be effected from respondent No.1 who retired in 2014 and is now about 76 years old would be impermissible.

14. Consequently, we do not find any manifest illegality in the impugned judgment/order warranting interference by this Court. The Letters Patent Appeal being devoid of any merit stands dismissed.

15. Pending application(s), if any, also stands disposed of.

**(ANUPINDER SINGH GREWAL)  
JUDGE**

**(DEEPAK MANCHANDA)  
JUDGE**

**04.09.2025**

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Whether speaking/ reasoned : Yes/ No  
Whether Reportable : Yes/ No