



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH  
(Sr. No. 229)**

(1) CWP No. 21835 of 2017 (O&M)  
Date of Decision : 29.07.2025

**Malkit Singh and others**

**...Petitioners**

**Versus**

**State of Punjab and others**

**...Respondents**

(2) CWP No. 3462 of 2019 (O&M)

**Jaswinder Singh and others**

**...Petitioners**

**Versus**

**State of Punjab and others**

**...Respondents**

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

Present: Ms. Manveer Kahlon, Advocate  
for the petitioners in CWP-21835-2017.

Mr. Neeraj Sharma, Advocate  
for the petitioners in CWP-3462-2019.

Mr. Rahul Rampal, Addl. A.G., Punjab.

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

1. In the present petitions, the challenge is to the order dated 30.06.2017 (Annexure P-2) by which recovery of the excess House Rent Allowance paid to the petitioners has been ordered. Further, prayer of the petitioners is that they are entitled for the House Rent Allowance @ 20% of



their basic pay whereas, the same has been directed to be paid @ 16% vide impugned order dated 29.03.2017 (Annexure P-4).

2. Learned counsel for the petitioners submits that the petitioners were working on a Class-III and Class-IV posts and were being given the House Rent Allowance @ 20% of their basic pay, which was accepted by them and there is no misrepresentation on their part but vide order dated 29.03.2017 (Annexure P-4), the respondents decided that instead of 20% House Rent Allowance, the same is to be paid @ 16% and consequent to the said decision, the recovery order dated 30.06.2017 (Annexure P-2) has been passed against the petitioners on the ground that they have been paid excess House Rent Allowance, which is arbitrary and illegal.

3. Learned counsel for the respondents submits that as the petitioners were working in the Village, they are only entitled for 10% House Rent Allowance + 6% Rural Allowance hence, House Rent Allowance which was being paid to the petitioners @ 20% was invalid. Hence, the excess amount paid was beyond the entitlement of the petitioners-workmen and the same has rightly been ordered to be recovered vide impugned order dated 30.06.2017.

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

5. It may be noticed that 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 can be



done from a Class III and Class IV employee. 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.”*

6. 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***, where an employee was not at fault with regard to the extension of benefit and there is no representation on behalf of the employee concerned to get the



emoluments beyond his/her entitlement, the recovery 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.”*

7. Keeping in view the settled principle of law, the recovery of excess amount paid to the petitioners as ordered vide impugned order dated 30.06.2017, the same cannot be done. Further, nothing has come on record that the petitioners were instrumental in getting the House Rent Allowance @ 20% rather the benefit was granted by the respondents themselves without there being any request from the employee concerned.

8. Learned counsel for the respondents has not been able to show that the claim of the petitioners qua recovery of excess amount is not covered



in their favour as per the judgment in *Rafiq Masih's case (supra)* or that the petitioners were instrumental in getting the excess House Rent Allowance by way of misrepresentation hence, in totality of the circumstances as well as keeping in view the settled principle of law, the excess amount paid to the petitioners cannot be recovered and the impugned order dated 30.06.2017 (Annexure P-2) is set-aside. Any recovery already done from the petitioners be refunded back to them.

9. Further, with regard to the letter dated 29.03.2017 (Annexure P-4) reducing the percentage of House Rent Allowance from 20% to 16%, learned counsel for the petitioners argues that the petitioners are posted in Patiala and it is only that they are doing the field duties they have to go to Villages and once, they are posted in Office which is in Patiala, they are entitled for the House Rent Allowance, which is admissible to a Class-A City which is 20%.

11. Merely that the petitioners are directed to work in Villages does not take away their right to get House Rent Allowance @ 20%, especially when the Office from which they are operating is situated within the Class-A City i.e. Patiala and nothing has come on record to show that the employees who are working and posted in Patiala and are doing field duties, are not entitled for 20% House Rent Allowance.

12. Further, it may be noticed that the issue with regard to the grant of House Rent Allowance is to be passed by the Competent Authority and not by the Superintending Engineer. Nothing has come on record that the State has taken any definite view of the Competent Authority that any



employee who might be posted in a Class-A City but is actually discharging the duties in a Village, will liable for the House Rent Allowance admissible to an employee who is residing in a Village.

13. Keeping in view the said fact, the order dated 29.03.2017 (Annexure P-4) cannot be sustained in the eyes of law, especially when the petitioners are posted in a Class-A City though, they might be doing the field duty in the Villages.

14. Writ petitions are allowed in above terms.

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

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

**July 29, 2025**  
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**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

*Whether speaking/reasoned : Yes*

*Whether reportable : No*