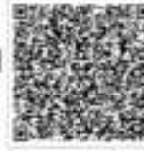


2025:PHHC:127701



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

SR. NO.110

**CWP-14089-2023 (O&M)
DATE OF DECISION:01.09.2025**

RESHAM SINGH

...PETITIONER(S)

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

N.S. SHEKHAWAT, J.

1. The petitioner has filed the present petition with a prayer to issue a writ in the nature of certiorari for quashing the order dated 19.05.2023 (Annexure P-9) passed by respondent No.3, whereby the recovery had been ordered from the retiral benefits of leave encashment of the petitioner. A further prayer was made to direct the respondents to refund the recovered/withheld leave encashment amount along with interest at the rate of 18% per annum from the date of retirement till its actual payment to the petitioner. It was also prayed that the respondents may be directed to pay the arrears of revised salary, which was revised vide order dated 19.05.2023, in pursuance to the Punjab Civil Services (Revised Pay) Rules, 2021 along

with interest from the date the said benefits became due till its actual payment to the petitioner and to pay the retiral benefits of regular pension, gratuity and all other benefits as admissible on the date of retirement along with interest.

2. Learned counsel for the petitioner submitted that the petitioner had joined on the post of Agriculture Inspector on 31.05.1988 and was re-designated as Agriculture Development Officer in 1991. He was promoted to the post of Agriculture Officer in the year 2014 and lastly to the post of Deputy Director, Agriculture in September 2021. In the year 2019, a charge-sheet was issued to the petitioner on the charges of committing negligence, dereliction in getting registered the case in the court and the petitioner was held guilty during inquiry and was awarded the punishment of “stoppage of one annual increment without cumulative effect” vide order dated 25.09.2019 (Annexure P-1). Since it was a punishment of stoppage of increment without cumulative effect, it ceased to have effect after the lapse of period of one year. Ultimately, the petitioner was granted two annual increments after one year. The petitioner challenged the order of punishment by way of CWP No.4012 of 2020 and vide order dated 14.02.2020 (Annexure P-2), this Court had stayed the operation of the order dated 25.09.2019 (Annexure P-1).

3. Learned counsel next submitted that on 05.07.2021, the Government of Punjab issued the Punjab Civil Services (Revised Pay) Rules, 2021, which came into effect w.e.f. 01.01.2016. As per the said rules, even the salary of the petitioner was liable to be revised, but no benefit was granted to him till his retirement. Since the petitioner was also performing

the duties of Chief Agriculture Officer as well as District Training Officer, the competent authority to revise and refix the salary of the petitioner was the Director, Department of Agriculture and Farmer Welfare, Punjab, i.e., respondent No.3. Though, the petitioner also submitted a representation dated 07.09.2022(Annexure P-3) to refix the salary in the revised pay-scales, but the benefit was not extended to the petitioner. Finally, the petitioner was posted at Ferozepur as District Training Officer and he retired on 31.01.2023 (Annexure P-5) on attaining the age of superannuation. On the date of his retirement, no complaint or inquiry was pending against him and only one writ petition filed by the petitioner against the order of withholding of increment without cumulative effect, was pending before this Court. Even though the petitioner was entitled to pension, gratuity, leave encashment, provident fund, etc., but only the provident fund was paid to him and the remaining retiral benefits were not paid. The petitioner even submitted a legal notice dated 05.04.2023 (Annexure P-6) on the respondents, but nothing was paid to him. Ultimately on 19.05.2023, respondent No.3 passed an order (Annexure P-8), extending the benefit of revised pay scale, as per the Punjab Civil Services (Revised Pay) Rules, 2021 to the petitioner. However, the arrears of revised pay scale had not been released to him and he was entitled to interest also from the date the said benefits became due till its actual payment to the petitioner. In the meantime, respondent No.3 passed another order dated 19.05.2023 (Annexure P-9), whereby leave encashment was sanctioned, however, while passing the said order, a recovery of ₹7,69,146/- was also effected from the retiral benefits of leave encashment on the ground that excess salary was paid to the petitioner. Learned counsel further submitted that the recovery was effected after the retirement of the

petitioner, when no inquiry or complaint was pending against him. Even the recovery had been effected without affording any opportunity of hearing to the petitioner. Neither any show-cause notice was issued to him before effecting the recovery, nor any reply was sought from him. It is further contended that the petitioner had neither misrepresented nor committed any fraud which had resulted in the alleged wrong fixation of pay and consequently payment of excess salary to him. Even otherwise, the petitioner had retired on 31.01.2023 however, the recovery was effected after his retirement from his retiral benefits of leave encashment on 19.05.2023.

4. Learned counsel refers to the law laid down by the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih* (2015) 4 SCC 334: 2015 AIR SC 696** to contend that the present case is squarely covered by the said judgment and the petitioner is entitled to the relief claimed in the present petition. Learned counsel for the petitioner further submitted that during the pendency of the petition, the petitioner has been paid the arrears of revised salary, but no interest has been paid on the delayed release of arrears of revised salary, which were paid on 27.07.2023. Even the amount of gratuity was released on 01.01.2024 and the regular pension was also started, but again, no interest was paid on the delayed payment of retiral benefits.

5. On the other hand, learned State counsel submitted that the excess payment was wrongly made to the petitioner; however, the same had already been recovered by respondent No.3 before any stay order was passed by this Court. Further, the information regarding the recovery of excess

payment was served upon the petitioner by the office of District Training Officer, Ferozepur. Thus, it cannot be said that the principles of natural justice were not followed. Apart from that, the pay of the petitioner has been revised in pursuance of the Punjab Civil Services (Revised Pay) Rules, 2021, which came into force w.e.f. 01.01.2016. Further, the petitioner was working as District Training Officer, Ferozepur himself and sent his case, being DDO to the Directorate on 09.11.2022 and had sent his pension papers in the old pay scale. The petitioner was informed to send his pension papers in the revised pay scale. After the retirement of the petitioner, the next DDO rectified the irregularity and it was found that the petitioner was getting excess payment. Consequently, the excess payment was recovered from the retiral benefits of the petitioner and the pension case with revision of pay was processed on 13.06.2023. Thus, the delay in payment of retiral benefits had occurred due to the petitioner himself and not due to the department. Even otherwise, the benefit of pension has been allowed to the petitioner and the leave encashment amount of ₹18,77,354/- has already been paid to the petitioner. Thus, the petitioner has no cause of action to file the instant petition before this Court and the same deserves to be dismissed.

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

7. The first relief claimed in the present petition is regarding setting aside the order dated 19.05.2023 (Annexure P-9) to the extent, whereby recovery was ordered to be effected from the leave encashment of the petitioner and a prayer has been made to release the recovered amount of leave encashment.

8. The issue relating to recovery of excess payment of emoluments/allowances/salary/other payments, disbursed as a consequence of erroneous computation of the same, has been considered by the Hon'ble Supreme Court in the matter of **Jogeshwar Sahoo and others Vs. The District Judge, Cuttack and others**, 2025 AIR SC 2291 and Hon'ble the Supreme Court has held as under:-

“7. The issue falling for our consideration is not about the legality of the retrospective promotion and the financial benefit granted to the appellants on 10.05.2017. The issue for consideration is whether recovery of the amount extended to the appellants while they were in service is justified after their retirement and that too without affording any opportunity of hearing.

*8. The law in this regard has been settled by this Court in catena of judgments rendered time and again; **Sahib Ram v. State of Haryana**, (1995) Supp (1) SCC 18, **Shyam Babu Verma v. Union of India**, 2 (1994) 2 SCC 521, **Union of India v. M. Bhaskar**, (1996) 4 SCC 416 and **V. Gangaram v. Regional Jt. Director**, (1997) 6 SCC 139 and in a recent decision in the matter of **Thomas Daniel v. State of Kerala & Ors.**, (2022) SCC Online SC 536.*

9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part 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 payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to

provide relief to the employee from the hardship that will be caused if the recovery is ordered.

10. In Thomas Daniel (supra), this Court has held thus in paras 10, 11, 12 and 13:

"10. In Sahib Ram v. State of Haryana this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees. It was held thus:

"5. 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 the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the 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 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."

11. In Col. B.J. Akkara (Retd.) v. Government of India this Court considered an identical question as under:

"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against

*recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide **Sahib Ram v. State of Haryana** [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], **Shyam Babu Verma v. Union of India** [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], **Union of India v. M. Bhaskar** [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and **V. Gangaram v. Regional Jt. Director** [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):*

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts

may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

*12. In **Syed Abdul Qadir v. State of Bihar** excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has*

subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.

13. In State of Punjab v. Rafiq Masih (White Washer) wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an

employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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18. 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*

(iii) Recovery from the 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.

11. In the case at hand, the appellants were working on the post of Stenographers when the subject illegal payment was made to them. It is not reflected in the record that such payment was made to the appellants on account of any fraud or misrepresentation by them. It seems, when the financial benefit was extended to the appellants by the District Judge, Cuttack, the same was subsequently not approved by the High Court which resulted in the subsequent order of recovery. It is also not in dispute that the payment was made in the year 2017 whereas the recovery was directed in the year 2023. However, in the meanwhile, the appellants have retired in the year 2020. It is also an admitted position that the appellants were not afforded any opportunity of hearing before issuing the order of recovery. The appellants having superannuated on a ministerial post of Stenographer were admittedly not holding any gazetted post as such applying the principle enunciated by this Court in the above quoted judgment, the recovery is found unsustainable.

9. In the present case also, there is no averment in the written statement that the petitioner had wrongly presented the facts or had committed any fraud. Moreover, the petitioner had already retired on 31.01.2023 and the recovery was ordered vide Annexure P-9 after his

retirement, i.e. on 19.05.2023. Further, it is also apparent from the record that before effecting the recovery from the petitioner, no show-cause notice was issued to him.

10. Apart from that, no departmental inquiry or any such proceedings were pending against the petitioner on the date of his retirement. Consequently, the case of the petitioner is squarely covered by the law laid down by the Hon'ble Supreme Court in the matters of **Jogeshwar Sahoo** (supra) and **Rafiq Masih** (supra). Therefore, the impugned order (Annexure P-9) is liable to be quashed by this Court and the recovery of excess salary from the leave encashment of the petitioner is liable to be refunded to him along with interest at the rate of 6% per annum from the date of recovery till its actual payment to the petitioner. Still further, the petitioner was also admittedly entitled to the benefit of the Punjab Civil Services (Revised Pay) Rules, 2021 and to the revision of pay in accordance with the said rules. The benefits under the said rules became due on 01.07.2021; however, the same were allowed vide order dated 19.05.2023 (Annexure P-8) and payment was made on 27.07.2023. The respondents could not place on record any material to indicate that the payment was made after a period of two years due to any fault on the part of the petitioner. Rather, from the record, it is borne out that the competent authority had refixed the salary of the petitioner after a long delay and therefore the petitioner is entitled to interest at the rate of 6% per annum on the delayed payment of arrears of revised salary w.e.f. 01.07.2021 to 27.07.2023.

11. Apart from that, the petitioner had retired on 31.01.2023, however, his gratuity was released on 01.02.2024. Even the leave encashment benefit was extended to him vide order dated 19.05.2023 (Annexure P-9). Even other retiral benefits were also released after several months. It is also an admitted fact that no departmental inquiry or any other proceedings were pending against the petitioner on the date of retirement. Consequently, this Court has no hesitation to hold that the benefits had been withheld without any fault on the part of the petitioner and he is entitled to interest at the rate of 6% per annum on the delayed payment of pensionary benefits.

12. Even as per the settled principle of law settled by the Full Bench of this Court in **A.S.Randhawa v. State of Punjab, reported as 1997 (3) SCT468**, if the pensionary benefit of an employee are not released within in a period of two months of his retirement, the employee is entitled to grant of interest on the delayed payment and this Court held as under:-

“11. Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way to compensate him is to pay him interest for the

period of delay on the amount as was due to him on the date of his retirement.

13. Similar observations have been made by a Co-ordinate Bench of this Court in *J.S.Cheema v. State of Haryana and others, reported as 2014 (13) RCR (Civil) 355*, wherein it has been observed as under:-

"The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it."

14. Keeping in view the above discussion, the present petition succeeds and is allowed in the above terms. Pending application(s), if any, shall also stand disposed of.

(N.S. SHEKHAWAT)
JUDGE

01.09.2025
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO