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

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**CWP-18384-2006 (O&M)
Date of Decision : 22.07.2025**

Sh. Kulwant Singh

...Petitioner

VERSUS

State of Punjab and Others

...Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurcharan Singh Bains, Advocate for
Mr. Vijay Sharma, Advocate, for the petitioner.

Mr. Kanav Singla, AAG, Punjab.

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HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition the challenge is to the order dated 20.09.2006, copy of which has been appended as Annexure P-5, whereby recovery has been ordered to be done from the petitioner on the ground that the proficiency step-up which was granted to the petitioner on 05.08.1991 was incorrect.

3. Learned counsel for the petitioner submits that the petitioner was working as a Senior Assistant with the respondent-department and he was granted the benefit of proficiency step-up on 05.08.1991 and his salary was fixed accordingly. Learned counsel for the petitioner further submits that after a period of 15 years, the said benefit was withdrawn and recovery has been ordered and that too without giving any opportunity of hearing to the petitioner and also against the settled principle of



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law. Hence, the impugned order dated 20.09.2006 (Annexure P-5) is liable to be set aside.

4. Learned counsel appearing on behalf of the respondent submits that once, the petitioner was paid an amount beyond his entitlement, the recovery is permissible and hence, the order dated 20.09.2006 (Annexure P-5) may kindly be upheld.

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

6. As per the settled principle of law settled by Hon'ble Supreme Court in case of *State of Punjab and others Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC (civil) 939*, no recovery can be done from Class-3 and Class-4 employees. Further, in paragraph 12 of the said judgment it has been mentioned that in case a person has been paid a benefit sought to be withdrawn for more than period of five years, no recovery can be made. 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."*

7. In the present case the petitioner was working as an Assistant, which is Class-3 post and the benefit which was given to him in the year 1991 was sought to be withdrawn in the year 2006 i.e. after a period of 15 years, which was impermissible.

8. Further, 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 there is no



misrepresentation or fraud on behalf of an employee so as to receive emoluments beyond his/her entitlement, the recovery cannot be done from employee concerned. 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.”.



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9. Learned counsel the respondent has not been able to rebut the said settled principle of law.
10. Keeping in view the settled principles of law noticed herein before, recovery of the excess amount could not have been done from the petitioner and the impugned order dated 20.09.2006 (Annexure P-5) is set aside. Any amount recovered from the petitioner be refunded back to him within a period of 8 weeks' from receipt of copy of this order.
10. The present petition is allowed in the above terms.
11. Pending application(s), if any, shall also stand disposed of.

July 22, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No