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one proficiency set-up increment on 16.01.2002 after completion of 24 years of service by re-fixing the pay, one increment granted on 16.01.2002, was withdrawn and a sum of Rs.1,27,318/- was deducted from the leave encashment as excess payment made to the petitioner with effect from 01.01.2001 to 01.10.2013. The impugned recovery has been made without there being any misrepresentation or fraud alleged against the petitioner for getting the increment on 16.01.2002 and the case of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court in 'State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.' (2015) 4 SCC 334.

3. Per contra, learned counsel for respondent No.2 submits that the recovery has been allegedly made and petitioner's case is required to be rejected in view of the judgment passed by the Hon'ble Supreme Court in Civil Appeal No.3500 of 2006 titled as 'High Court of Punjab and Haryana and others Vs. Jagdev Singh' decided on 29.07.2016. He further refers to Annexure R-2/2 and submits that the petitioner has given an undertaking, as such, in view of the settled law by the Hon'ble Supreme Court in **Jagdev Singh's case (supra)**, the writ petition of the petitioner is required to be dismissed.

4. Having heard learned counsel for the parties and after perusal of the records, it transpires that the petitioner was promoted and was on probation for one year in terms of the order dated 12.02.2001 as referred to in the impugned order at page 38 of the paper book and it was detected that the salary of the petitioner was wrongly fixed by granting him two increments and it was ordered to be re-fixed correctly vide order dated 24.03.2006. Further, the petitioner was granted the benefit of ACP on completion of 24 years on 31.08.2006, whereas, the impugned recovery was made on 12.02.2015.



Further, the perusal of Annexure R-2/2 does not indicate in any manner that the petitioner was put on notice that any payment found to have been made in excess is required to be refunded. The relevant paragraph of the Form of Option (Annexure R-2/2) is reproduced below:-

‘(I) I DILBAGH SINGH opt for the revised pay structure with effect from 01.01.2006. Increment due on 01.01.2006 may be granted to me in the revised pay Band as per note 1 below Rule 7 of Punjab Civil Services (Revised Pay) Rules, 2009.’

5. Moreover, there is no undertaking as relied upon by learned counsel for respondent No.2, rather, it was an option exercised in terms of Rule 6 (1) in the prescribed format or with regard to form of option, whereas, the perusal of the vernacular at page 74 of the paper book, one undertaking is attached. Perusal of the same indicates that if the pay of the petitioner is fixed incorrectly in terms of the revision of pay scales with effect from 01.01.2006, the petitioner would have no objection for the recovery of the excess amount and he will be bound for the adjustment of the excess amount from his pay. The excess recovery was made from the petitioner on the ground of granting of two increments in the year 2001 which has no nexus with the undertaking available at page 74 which talks about the revision of pay scale with effect from 01.01.2006, as such, the case of the petitioner is squarely covered by the ratio of law as laid down in ***Rafiq Masih’s case (supra)*** which made the following observations:-

‘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. In view of the discussion above and the settled law laid down by the Hon'ble Supreme Court in **Rafiq Masih's case (supra)**, the present civil writ petition is allowed and the impugned orders dated 11.10.2021 (Annexure P-10) and 12.02.2015 (Annexure P-3) are hereby quashed. The respondents are directed to release the withheld leave encashment amount of Rs.1,27,318/- to the petitioner along with interest @ 6% per annum from the date of recovery till the date of actual realization in terms of the judgment rendered by a Full Bench of this Court in **A.S. Randhawa Supg. Engineer (Retd.) vs. State of Punjab**



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1998 (1) SCT 343, within a period of three months from the date of receipt of certified copy of this order.

(HARPREET SINGH BRAR)
JUDGE

23.09.2025

Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No