



CWP-8506-2024

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

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CWP-8506-2024

Reserved on: 04.03.2025

Pronounced on: 20.03.2025

Roop Chand

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

**Present:- Mr. Sunny Singla, Advocate
for the petitioner.**

Mr. Surya Kumar, AAG, Punjab.

**Mr. Gurvinder Pal singh, Advocate for
Mr. Shekhar Verma, Advocate for respondent no3.**

DEEPINDER SINGH NALWA, J.

By way of the present writ petition, the petitioner has challenged the letters dated 06.03.2024 (Annexure P-1) and 20.3.2024 (Annexure P-4), whereby, an amount of Rs.1,05,042/- has been ordered to be recovered from the petitioner.

A perusal of the facts of the case would show that the petitioner was appointed on 01.06.1976 on regular basis in respondent no.3-the Municipal Council, Mullanpur Dakha, Distt. Ludhiana. On attaining the age of superannuation, i.e 60 years being group-D employee, the petitioner retired from service on 31.12.2016. After 7 years of his retirement, respondent no.3, has issued a letter dated 6.3.2024 (Annexure P-1), wherein, it has been mentioned that the petitioner has been overpaid an amount of Rs.1,05,042/- while releasing arrears of gratuity and leave encashment after retirement. A

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perusal of the above said letter would also show that the demand of refund of overpaid amount is based on the basis of an affidavit given by the petitioner at the time of retirement to the effect that if excess amount is paid to the petitioner, in that case, the petitioner will return the same to the respondent-Council.

The petitioner submitted a representation dated 15.3.2024 in reference to the above said letter dated 6.3.2024 (Annexure P-1). In the representation, the petitioner had stated that as the petitioner had not committed any fraud or misrepresentation, as such, no excess amount could be recovered from the petitioner. The respondent-Council again issued another letter dated 20.3.2024 (Annexure P-4) addressed to the petitioner, wherein, the petitioner was told to immediately deposit the excess amount. It was further stated in the above said letter that in case, the petitioner does not deposit the recovery amount, further action will be taken against the petitioner.

Aggrieved against the above said letters dated 06.03.2024 (Annexure P-1) and 20.03.2024 (Annexure P-4), the petitioner has filed the present writ petition.

Learned counsel appearing on behalf of the petitioner does not dispute with regard to the excess amount being paid to the petitioner while releasing the arrears of gratuity and leave encashment. It is also not in dispute that the petitioner had given an affidavit dated 19.4.2017 (Annexure R-3/1) to the effect that in the event any excess amount is paid inadvertently, the same will be refunded to the respondent-Council. Learned counsel appearing on behalf of the petitioner submits that excess amount was not paid to the



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petitioner on account of any misrepresentation, concealment or fraud, on the part of the petitioner. It is also the case of the petitioner that before the issuance of the aforesaid letters, no notice was given to the petitioner. Learned counsel appearing on behalf of the petitioner has placed reliance on the judgement passed by Hon'ble the Supreme Court in the case of ***State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. 2015(1) SCT 195*** and on the basis of the above said judgement, as per the petitioner, there cannot be any recovery of the excess amount paid after retirement.

Learned counsel appearing on behalf of respondent no.3, on the other hand submits that the judgement relied upon by the counsel for the petitioner in ***Rafiq Masih's case (supra)*** would not be applicable in the present case for the reason that the petitioner has already given an affidavit dated 19.4.2017 Annexure R-3/1, wherein it has been stated that if any excess amount is paid to the petitioner, he is bound to return the same to the respondent-Council. Reliance has been made on the judgement passed by Hon'ble the Supreme Court in the case of ***"High Court of Punjab and Haryana and Others vs. Jagdev Singh (2016) 14 SCC 267."***

The principles for allowing recovery of over payments are well laid down in various judgements and has undergone various changes.

In case of ***Col. B. J. Akkara (Retd.) v. Government of India and others (2006) 11 SCC 709***, it was observed as under:-

"28. Such relief, restraining recovery back 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



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*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.***"

In case of **Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC**

475, the Hon'ble Supreme Court observed as under:-

*"59. Undoubtedly, the excess amount that has been paid to the appellants 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 appellants-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 appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.**"*



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Both these decisions in cases of **Col. B. J. Akkara (Retd.) and Syed Abdul Qadir (supra)**, were considered by the Hon'ble Supreme Court in case of ***Chandi Prasad Uniyal and Ors. v. State of Uttarakhand and Ors. (2012) 8 SCC 417***, wherein it was observed as under:-

"14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B. J. Akkara (Retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

*16. The appellants in the appeal will not fall in any of these exceptional categories, over and above, **there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were***



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working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly instalments starting from October 2012."

The entire case law was again considered by Hon'ble Supreme Court in its decision in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others (2015) 4 SCC 334***, in which the Hon'ble Supreme Court has laid down the following principles and guidelines:

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 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*



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extent, as would far outweigh the equitable balance of the employer's right to recover."

In the case of ***Thomas Daniel Vs. State of Kerala and Others, 2022(2) SCT 722***, Hon'ble Supreme Court after considering ***Rafiq Masih's case (supra)*** held that if an excess amount was not paid on the basis of misrepresentation or fraud by an employee in that case, an attempt to recover excess payment after 10 years of retirement was unjustified. Relevant paras are reproduced 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.

10. In Sahib Ram v. State of Haryana and Others, 1995 Supp (1) SCC 18 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:



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*"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 and Others, (2006) 11 SCC 709 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 7-61999. 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]):



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(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



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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 and Others v. State of Bihar and Others, (2009) 3 SCC 475 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



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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 and Others v. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334 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



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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.

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 hereinabove, 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."

14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake



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in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.

A perusal of the above said judgment would show that in the above said case, retired employee had not given an undertaking or an affidavit to the effect that in case of excess amount being paid, the same will be refunded back to the employer. However, a perusal of the facts of the present case would show that the petitioner in this case had given an affidavit that if an excess amount is paid to the petitioner while paying the retiral benefits, the petitioner would return the same to the respondent-Council. Relevant extract of the affidavit (Annexure R-3/1) is reproduced as under:

AFFIDAVIT

I, Rup Chand son of Itbari Lal, am resident of Dr. Ambedkar Nagar, Mandi Mullanpur, Tehsil and District Ludhiana and do hereby declare as under:-

- 1) That I, Rup Chand have retired as Head Sweeper on 31-12-2016.***
- 2) That during paying me retrial benefits to me, if excess amount of dues is paid to me inadvertently by the Municipal Council, Mullanpur, then I shall be bounded return the same to the M.C. Mullanpur.***
- 3) That at the time of granting me pension, if any excess amount is paid to me, then I shall be bounded to get deduct excess amount from my pension.***



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4) That beside the above if any difference is found in my amount to be paid to me, I shall be bounded to follow the order of the M.C.

Sd/-

Deponent

Verification

Verified that the facts of my abovesaid affidavit are true and correct. Nothing material has been kept concealed therein.

Sd/-

Deponent

Attested as Identified

Sd Notary Public, dt.19-04-2017

A perusal of the above said undertaking would show that the said undertaking is not a general undertaking but a specific undertaking wherein it has been mentioned by the petitioner that while paying retiral benefits, if excess amount is paid to the petitioner by the Municipal-Council, then the petitioner is bound to return the same.

An issue with regard to the recovery of excess amount from the retired employees or employees who are due to retire within one year on the basis of an undertaking came up for consideration before Hon'ble the Supreme Court in ***High Court of Punjab and Haryana and Others Vs. Jagdev Singh (2016) 14 SCC 267***. In the above said case, while opting for the revised pay scale in pursuance of Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001, each officer was required to submit an undertaking that any excess amount, if found to



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have been paid, will be refunded to the Government either by adjustment against future payments due or otherwise. On the basis of an undertaking given by the Officer, it was held by Hon'ble the Supreme Court that officer was held to be bound by such undertaking. Relevant observations are reproduced as under:

9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab & Ors etc. v. Rafiq Masih (White Washer) etc. 2015(1) S.C.T. 195: 2015(1) Recent Apex Judgments (R.A.J.) 104: (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

"(1) 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.



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(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)

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over period of two years.

A similar issue came up for consideration before the Hon'ble Division Bench of this Court in LPA No. 2230 of 2016 titled as, "**Punjab Water Resources Management and Development Corporation Limited Vs. Subhash Chand and others**" decided on 10.1.2018. In the said LPA, the judgement of learned Single Judge of this Court was challenged, wherein, by relying upon the judgement in **Rafiq Masih's case (supra)**, the claim of the petitioner-Corporation seeking to recover the excess amount of salary paid was held to be bad. In the said LPA, Hon'ble the Division Bench after



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considering **Jagdev Singh's case (supra)** held that where there is an undertaking given by an employee, **Jagdev Singh's case (supra)** will be applicable and not **Rafiq Masih's case (supra)**. Consequently, the judgement of the Coordinate Bench was set aside and the Corporation was held entitled for the recovery of the excess amount paid to the employee. The relevant paras are reproduced as under:

11. It was after the circulation of the seniority list in terms of the order passed by this Court in Darshana Sharma's case (supra) that the Corporation found that certain benefits had been granted to the respondents/writ petitioners, which were not in consonance with the placement of the respondents/ writ petitioners in the seniority list. Hence, those were required to be recovered. Thereafter, notices were issued to the respondents/ writ petitioners on various dates in the year 2015, specifying the amount which was to be recovered from them, as a consequence of decision in Darshana Sharma's case (supra). The aforesaid orders were challenged by the respondents by filing CWP No. 17709 of 2015 relying upon judgment of Hon'ble the Supreme Court in Rafiq Masih's case (supra), as the respondents had retired from service by that time and found to be employees of Group-C service. The writ petition was allowed on 6.5.2016. Even the Review Application filed by the appellant-corporation bearing RA No. 220-CWP of 2016 was also dismissed on 17.8.2016.

12. The issue regarding recovery of the emoluments paid in excess of entitlement, especially in the cases where an employee furnished an undertaking/ affidavit to return the same in case emoluments are not found to be payable, has been gone into by Hon'ble the Supreme Court in Jagdev Singh's case (supra), wherein considering the earlier judgment in Rafiq Masih's case (supra), it has been opined that the principles laid down therein cannot apply in a situation where an officer to whom the



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payment is made at the first instance is clearly placed on notice that any payment found to have been made in excess will be required to be refunded and undertaking to that effect had been given by that employee, in that situation he will be bound by the undertaking. Relevant paras from the aforesaid judgment are extracted below:-

"10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc1. this Court held that while it is not possible to postulate all situations of hardship 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).

11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In



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the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years. "

13. Considering the aforesaid enunciation of law laid down by Hon'ble the Supreme Court, in our view, the order passed by this Court in Ravinder Paul Malhi's case (supra), which was decided on 21.12.2015, will not come to the rescue of the respondents/ writ petitioners, where a distinction was carved out regarding payment of emolument before the undertaking was furnished and subsequent thereto. In the case in hand, definite stand taken by the appellant is that entire amount, which is sought to be recovered from the respondents/ writ petitioners was paid to them only after they had furnished the undertaking.

14. For the reasons mentioned above, the present appeal is allowed. The order dated 6.5.2016 passed in the writ petition and the order dated 17.8.2016 passed in Review Application are set aside. As a consequence thereof, the writ petition stands dismissed.

Even the SLP filed against the said judgement being SLP(C)

No.9015 of 2018 titled as ***Jasbir Singh vs. Punjab Water Resources Management and Development Corporation Limited and others*** was dismissed by Hon'ble Supreme Court on 2.7.2018



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A similar issue came up for consideration before a Coordinate Bench of this Court in ***Parmeshwari Devi Vs. State of Haryana and others (CWP No.18784 of 2019)*** decided on **15.2.2024**. In the above said case, an amount was paid beyond the entitlement of the petitioner. It was held that keeping in view the undertaking, the bank was within its jurisdiction to recover the excess amount. Relevant paragraphs are reproduced as under:

7. *As per the respondents, the petitioner had given an undertaking at the time of retirement that in case any pension is paid to her over and above her entitlement or any excess amount is credited in her account, the same can be withdrawn or claimed back by the bank. Copy of the said undertaking has been attached as Annexure R-3/1. Keeping in view the said undertaking, the question arises as to whether, the claim of the petitioner qua the recovery of the excess amount being done from her is to be decided as per the judgment of the Hon'ble Supreme Court of India in Rafiq Masih's case (supra) or by the Jagdev Singh's case (supra).*

8. ***It may be noticed that the judgment of the Hon'ble Supreme Court of India in Rafiq Masih's case (supra) has been considered by the Hon'ble Supreme Court of India in Jagdev Singh's case (supra) and it has been held that where there is an undertaking qua the recovery of excess amount paid, the said undertaking has to be given effect to and once the petitioner has given an undertaking that in case any amount over and above her entitlement is credited in her account, the same can be recovered by the bank hence, recovery of the excess amount of Rs.10,40,830/- paid to the petitioner is well within the jurisdiction of the bank.***

A perusal of the facts of the present case would show that it is an admitted fact that the petitioner had given an affidavit to the effect that after release of the retiral benefits, if any excess amount is paid to him, he would



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refund the same. It is also not the case of the petitioner that excess amount was not paid to the petitioner at the time of release of arrears of gratuity and leave encashment after giving an affidavit. Taking into consideration the above said facts, the case of the petitioner will be governed by the judgement of Hon’ble Supreme Court in *Jagdev Singh’s case (supra)*.

Hence the recovery of the excess amount from the petitioner in the facts and circumstances of this case is permissible in law. As such there is no illegality in the impugned letters issued by the respondent-council. Keeping in view the above, this petition is dismissed.

March 20, 2025
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(DEEPINDER SINGH NALWA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable:	Yes