

HIGH COURT OF PUNJAB & HARYANA & ORS.

v.

JAGDEV SINGH

(Civil Appeal No. 3500 of 2006)

JULY 29, 2016

[T. S. THAKUR, CJI AND DR. D. Y. CHANDRACHUD, J.]

Service Law – Salary – Excess payment – Recovery in terms of undertaking – Respondent availed revised pay scale and also gave undertaking under Pay Rules to refund any excess payment – Pay rules further revised – Recovery action against respondent for adjustment of excess payment – Propriety of – Held: While opting for the benefit of revised pay scale, respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment made – Respondent had specifically furnished an undertaking to this effect while opting for revised pay scale, thus was bound by it – Therefore, plea that recovery from retired employees is impermissible, rejected – Recovery to be made in reasonable instalments – Judiciary – Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2001 – Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2003.

Respondent, a judicial officer, availed revised pay scale with effect from 7.1.2000 and also gave an undertaking, under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2001 to refund any excess payment if so demanded subsequently. He was compulsorily retired from service on 12.2.2003. Pay scale was again revised, w.e.f. 1.1.1996, vide Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2003 notified on 7.5.2003. Subsequently, exercise was undertaken for adjustment of the excess payment made following notification of Revised Pay Rules of 2003. Recovery letter was served on the Respondent. The respondent challenged the action of recovery in writ proceedings u/Art. 226. The petition was allowed by the

A **High Court. Hence, the present appeal.**

Allowing the appeal, the Court

B **HELD: 1. When the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit filed by the Respondent, this position was specifically admitted. When the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. The excess payment was sought to be recovered in terms of the undertaking. [Para 8] [784-E-F]**

C **2.1 The submission that a payment made in excess cannot be recovered from a retired employee would have no application to a situation 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. [Para 9] [784-G; 785-A]**

D **2.2 The principle that recovery from retired employees would be impermissible in law cannot apply to a situation 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. The recovery be made in reasonable equated monthly instalments spread over a period of two years. [Para 11 and 12] [785-F-G; 786-A]**

E **2.3**

F **2.4**

G ***State of Punjab & Ors etc. v. Rafiq Masih (White Washer) etc.* (2015) 4 SCC 334 – held inapplicable.**

Case Law Reference

(2015) 4 SCC 334

held inapplicable

Para 11

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3500 of 2006. A

From the Judgment and Order dated 01.08.2005 of the High Court of Punjab and Haryana in CWP No. 3999 of 2005.

Manjit Singh Sr. Adv., Rahul Gupta, Adv. for the Appellants. B

Vinod Sharma, Arun Singh, S. K. Visen, Prem Malhotra, Advs. for the Respondent.

The Judgment of the Court was delivered by

DR. D. Y. CHANDRACHUD, J. 1. The High Court of Punjab and Haryana allowed, by its judgment dated 1 August 2005, a petition filed by the Respondent under Article 226 of the Constitution to challenge a direction issued by the State to the Accountant General for the recovery of an excess payment towards salary. C

2. The facts lie in a narrow compass. The Respondent was appointed as a Civil Judge (Junior Division) on 16 July 1987 and was promoted as Additional Civil Judge on 28 August 1997 in the judicial service of the State. By a notification dated 28 September 2001, a pay scale of Rs. 10000-325-15200 (senior scale) was allowed under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2001. Under the rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise. D
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3. The Respondent furnished an undertaking and was granted the revised pay scale and selection grade of Rs. 14300-400-18000-300. While opting for the revised pay scale, the Respondent undertook to refund any excess payment if it was so detected and demanded subsequently. The revised pay scale in the selection grade was allowed to the Respondent on 7 January 2002. F

4. The Respondent was placed under suspension on 19 August 2002 and eventually, was compulsorily retired from service on 12 February 2003. G

5. In the meantime, this Court in Civil Writ (C) 1022 of 1989 H

A accepted the recommendations of the First National Judicial Pay Commission (Shetty Commission). Thereupon, the Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2003 were notified on 7 May 2003.

B 6. In view thereof the pay scales of judicial officers in Haryana were once again revised with effect from 1 January 1996. An exercise was undertaken for adjustment of excess payments made to judicial officers, following the notification of the revised pay rules. On 18 February 2004, a letter for the recovery of an amount of Rs. 1,22,003/- was served upon the Respondent pursuant to the direction of the Registrar of the High Court.

C 7. The Respondent challenged the action for recovery in writ proceedings under Article 226. The petition was allowed by the impugned judgment of the High Court. The High Court found substance in the grievance of the Respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part.

D 8. The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically 'admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February 2004, the excess payment was sought to be recovered in terms of the undertaking.

E 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

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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. A

10. In *State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc*¹. 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: B

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service). C

(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. D

(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.” E

(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. F G

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

¹ (2015) 4 SCC 334

A direct that the recovery be made in equated monthly instalments spread over a period of two years.

13. The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs.

B Divya Pandey

Appeal allowed.