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

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Date of Decision: **November 04, 2025**

Sajjan Kumar Goyal

.....Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Raman B. Garg, Advocate with Mr. Mayank Garg and
Mr. Navjeet Singh, Advocate for the petitioner.

Mr. Arun Singla, AAG, Haryana.

Ms. Navya Jindal, Advocate for
Mr. Prince Singh, Advocate for respondent No.3.

HARPREET SINGH BRAR, J. (Oral)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India with a prayer for issuance of an appropriate writ or order in the nature of *certiorari* for quashing the impugned order dated 16.11.2022 (Annexure P-4) which upheld the recovery of an amount of ₹6,63,688/- from the petitioner's pension with further directions to pay the recovered amount to the petitioner with interest @ 12% p.a.

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**FACTUAL BACKGROUND**

2. Briefly stated, the facts are that the petitioner retired from the post of Executive Officer from the Municipal Council, Kaithal (Respondent No. 3) on attaining the age of superannuation on 29.02.2016. Upon retirement, the petitioner was issued a Pension Payment Order (PPO) No. 6386 by the Director, Urban Local Bodies, Haryana (Respondent No. 2) vide letter dated 09.08.2016, sanctioning his pension with effect from 01.03.2016. A copy of the PPO was sent to the Punjab National Bank, Kaithal (Respondent No. 4), where the petitioner held his pension account.

3. In the year 2019, the respondent authorities, on their own motion, revised the petitioner's pension with effect from 01.03.2016. This revision was undertaken under the Haryana Civil Services (Revised Pension) Part-I Rules, 2017, read with Office Memorandum dated 10.01.2018 and Office Memo dated 27.05.2019. However, neither any calculations for this revision were provided to the petitioner, nor did he make any representation inducing the authorities to pay any alleged excess amount. Thus, the revision was a unilateral act of the respondents. Subsequently, on 31.03.2021, an amount of ₹6,63,688/- was deducted from the petitioner's personal bank account with Respondent No. 4 Bank. The transaction was remarked as 'Recovery of Excess Pension.' This recovery was effected without any prior notice, show-cause, or opportunity of hearing to the petitioner.

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4. Aggrieved by the aforesaid action, the petitioner issued a legal notice-cum-representation dated 22.06.2022 (Annexure P-2) to Respondent No. 2, requesting the refund of the recovered amount. Upon receiving no response, the petitioner approached this Court by way of CWP No. 18207 of 2022. Vide order dated 22.08.2022 (Annexure P-3), this Court disposed of the said writ petition with a direction to Respondent No. 2 to decide the petitioner's representation by passing a speaking order within eight weeks.

5. In purported compliance with the aforesaid direction, Respondent No. 2 passed the impugned order/endorsement dated 16.11.2022 (Annexure P-4) whereby the petitioner's claim for refund was rejected. The respondent authority justified the recovery by stating that due to a 'clerical error,' the petitioner had been inadvertently paid two Dearness Allowances (DA), one on the revised pension and another on the unrevised pension, from April 2019 to February 2021, amounting to an excess payment of ₹28,856/- per month. The impugned order further insinuated that the petitioner, being an educated person, must have been aware that he has received an excess payment. Being aggrieved by the impugned order (Annexure P-4), the petitioner has filed the present writ petition.

CONTENTIONS

6. Learned counsel for the petitioner *inter alia* submits that the hefty recovery of ₹6,63,688/- was effected on 31.03.2021 without issuing any prior show-cause notice, notice of recovery, or providing any

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opportunity of hearing to the petitioner and therefore, the impugned recovery is in violation of principles of nature justice. Furthermore, the grant of pension to the petitioner is governed by the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993. Rule 9(1) of these rules makes the Punjab Civil Services Rules, Volume II (as applicable to Haryana) applicable *mutatis mutandis*. The attention of this Court was drawn to the Note under Rule 2.2(a) of the Punjab Civil Services Rules, Volume II. A bare reading of Clause II of this Note makes it explicitly clear that no recovery of the nature described in clauses (1) to (3), which includes recovery of over-issues of pay and allowances, may be effected by deduction from a pension already sanctioned, except at the request or with the express consent of the pensioner. In the present case, no consent, request, or even prior intimation was obtained from the petitioner before effecting the recovery. Therefore, the recovery is per se illegal being made without the authority of law.

7. Learned counsel further submits that the present case is squarely covered by the judgement rendered by the Hon'ble Supreme Court in the case of ***State of Punjab v. Rafiq Masih 2015(1) SCT 195*** and that the impugned recovery is in direct violation of the principles laid down by the Hon'ble Apex Court. Reliance is also placed on the judgements of the Hon'ble Supreme Court in ***Jagdish Prasad Singh v. State of Bihar 2024 AIR Supreme Court 3950*** and ***Thomas Daniel v. State of Kerala 2022 SCC OnLine SC 536***.

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8. *Per contra*, learned counsel for the respondent(s) submits that the pension of the petitioner has been revised in the month of April, 2019 by giving him the benefit of pension revision in terms of the 7th Pay Commission. However, due to a clerical error, old dearness allowance in addition to the revised pension was released to the petitioner. Upon rectifying the aforesaid error, in the month of March, 2021, the excess amount of Rs.6,63,688/- paid from April, 2019 to February, 2021, was immediately deducted from the account of the petitioner. However, learned counsel could not controvert the reliance placed by the learned counsel for the petitioner on *Rafiq Masih's case (supra)*.

OBSERVATION & ANALYSIS

9. Having heard learned counsel for the parties and after perusing the record with their able assistance, the following questions arise before this Court for adjudication:

- i. Whether the recovery of excess payment can be effected from the pension of a Government employee after retirement, in the absence of his express consent?*
- ii. Whether the pension of a Government employee, once duly authorised, can subsequently be refixed to his disadvantage after retirement?*

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Recovery from Pension after retirement

10. Rule 9(1) of the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993 provides that the Punjab Civil Services Rules, Volume II (as applicable to the State of Haryana) shall be applicable *mutatis mutandis* for the grant of pension. The Note under Rule 2.2(a) of the Punjab Civil Services Rules, Volume II deals with recovery from pension and is reproduced below:

“Note.— A claim against the Government employee may become known and the question of making recovery may arise—

(a) When the calculation of pension is being made and before the pension is actually sanctioned; or

(b) after the pension has been sanctioned.

The claim and the recovery may be one or other of the following categories:-

(1) Recovery as a punitive measure in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service.

(2) Recovery of other Government dues such as over issues of pay, allowances or leave salary, or admitted and obvious dues such as house rent, postal life insurance premia, outstanding motor car, house building, travelling allowance or other advances.

(3) Recovery of non-Government dues.

I. In cases falling under:-

(a) above, none of the recoveries mentioned in (1) to (3) above may be effected by a reduction of the pension about to be sanctioned except in the following circumstances:-

(i) Omitted.

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(ii) When the pensioner by request made or consent given has agreed that the recovery may be made. If such request is not made or consent is not given by the pensioner, even sums admittedly due to Government such as house rent, outstanding advances, etc., may not be recovered from pension. In such cases, however, the executive authorities concerned would have to consider whether they should not try to effect the recovery otherwise than from pension, for example, by going to a court of law, if necessary.

II. In cases falling under (b) above, none of the recoveries described in clauses (1) to (3) may be effected by the deduction from a pension already sanctioned except at the request or with the express consent of the pensioner. Under rule 2.2 (a) of this Volume, future good conduct is an implied condition of every grant of a pension and a pension can be withheld or withdrawn in whole or in part if the pensioner is convicted of serious crime or is guilty of grave misconduct. This, however, refers only to crime or misconduct occurring after the pensioner has retired from service, and the rule would not, therefore, cover a reduction of pension made for the purpose of retrieving loss caused to Government as a result of negligence or fraud on the part of the pensioner occurring before he had retired from service.

In cases where the pensioner does not agree to recovery being made even of sums admittedly due to Government, the concluding remarks under I (ii) above will also be applicable...

(Emphasis supplied)

11. Clearly, with respect to cases involving recovery of other Government dues, such as over issues of pay, allowances, leave salary, etc., after pension has been sanctioned, the Note to Rule 2.2(a) explicitly stipulates that such recovery may be made from the pension ***only upon the request or with the express consent of the pensioner.*** In the absence of such consent, no deduction can be effected from the pension. However, in such

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circumstances, the concerned executive authorities shall remain at liberty to pursue recovery through other lawful means by availing appropriate legal remedies before a competent Court.

12. Further still, the Punjab Civil Services Rules, Volume II have been replaced by the Haryana Civil Services (Pension) Rules, 2016, which came into effect on 19.07.2016 and govern the pensionary matters of Government employees in the State of Haryana. Rule 11 of the said Rules of 2016 pertains to the recovery of Government dues or other amounts from pension and is reproduced below:

“11. Recovery of Government dues or others from pension.—

(1) A claim against the Government employee shall become known and the question of making recovery shall arise—

(i) when the calculation of pension is being made and before the pension is actually sanctioned; or

(ii) after the pension has been sanctioned.

(2) The claim and the recovery shall be one or other of the following categories:-

(a) recovery as a punitive measure in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service;

(b) recovery of other Government dues such as over issues of pay, allowances or leave salary, or admitted and obvious dues such as house rent, travelling allowance, outstanding motor car, house building, or other loans and advances, licence fee, etc;

(c) Recovery of non-Government dues.



(3) Recoveries described in clause (2) (b) and (c) above shall be made from outstanding dues of the employee, such as arrears of pay and allowances, leave salary, leave encashment, death-cum-retirement gratuity, dearness relief on pension, etc., however, none of the above recoveries shall be affected by a reduction of the pension to be sanctioned or already sanctioned except with the written consent of the pensioner. If such consent is not given by the pensioner, a suit for recovery shall be filed in a court of law.

Note 1.- Heads of offices shall ensure that all the outstanding sums against the employee are adjusted against the dues of the employee such as pay, leave salary or leave encashment, death-cum-retirement gratuity, etc. In case the outstanding sums are not feasible to be recovered fully then the outstanding amount shall be clearly and completely noted in the last pay certificate for effecting recovery from death-cum-retirement gratuity and if the recovery is to be effected from pension, it shall be clearly recorded on the last pay certificate itself that the request or express consent of the pensioner in writing to recover from his pension has been obtained.

Note 2.- The recovery from pension is not permissible but if final recovery has been made it need not be refunded to the pensioner concerned.”

13. Therefore, under Rule 11 as well, in cases involving recovery of other Government dues, such as over issues of pay, allowances, leave salary, etc., after pension has been sanctioned, no such recovery shall be affected by a reduction of the pension ***except with the written consent of the pensioner***. If such consent is not given by the pensioner, a suit for recovery shall be filed in a competent Court. Accordingly, it is evident that the legislative mandate calls for an express written consent of the pensioner before any recovery can be effected from his pension.

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14. The Hon'ble Supreme Court has unequivocally held that the service conditions of an employee are governed by the rules in force at the time of their retirement; consequently, any rules introduced thereafter shall have no application to them. Reliance in this regard can be placed on the judgements of the Hon'ble Apex Court in *State of Punjab v. Boota Singh 2000(3) SCC 733* and *State of Punjab v. J.L. Gupta 2000 (2) SCT 8*. A two-Judge Bench judgement of the Hon'ble Supreme Court in *Boota Singh (supra)*, speaking through Justice Sujata V. Manohar, opined as under:

“7. On merits we find that the retirement benefits which are claimed by the respondent are benefits which are conferred by subsequent orders/ notifications. Therefore, persons who retired after the coming into force of these notifications and order are governed by different rules of retirement than those who retired under the old rules and were governed by the old rules. The two categories of persons, who retired were governed by two different sets of rules. They cannot, therefore, be equated. Further, granting of additional benefits has financial implications also. Hence, specifying the date for the conferment of such additional benefits cannot be considered as arbitrary.”

(Emphasis supplied)

15. In the present case, the petitioner retired from service on 26.02.2016, when the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993 were in force. These Rules provided that the Punjab Civil Services Rules, Volume II (as applicable to the State of Haryana) would apply *mutatis mutandis* for the grant of pension. The Haryana Civil Services (Pension) Rules, 2016 came into effect on 19.07.2016, i.e., subsequent to the petitioner's retirement. Accordingly, the

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petitioner's case shall be governed by the provisions of the Punjab Civil Services Rules, Volume II (as applicable to the State of Haryana). Moreover, Rule 4 of the Haryana Civil Services (Pension) Rules, 2016 also states that any claim to pension or family pension shall be regulated by the provisions of the rules in force at the time when a Government employee is retired, discharged or allowed to resign from service or dies, as the case may be. Rule 4 is reproduced as under:

“4. Regulation of claims to pension or family pension.—

Any claim to pension or family pension shall be regulated by the provisions of the rules in force at the time when a Government employee is retired, discharged or allowed to resign from service or dies, as the case may be.”

16. Moving on, the issue of effecting recovery from pension after retirement has come up for consideration before the Hon'ble Supreme Court on multiple occasions. In ***Rafiq Masih (supra)***, a two-Judge Bench of the Hon'ble Supreme Court has categorically held that recovery from retired employees is impermissible in law. Speaking through Justice Jagdish Singh Khehar, the following was observed:

*“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:***

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(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)

17. Recently, a two-Judge Bench of the Hon’ble Supreme Court in ***Jagdish Prasad Singh (supra)***, speaking through Justice Sandeep Mehta, has held as follows:

“21. We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir and Others v. State of Bihar and Others (2009) 3 SCC 475, this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the Syed Abdul Qadir(supra) are extracted hereinbelow: -

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances



if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) 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.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

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."

(emphasis supplied)

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22. Similarly, this Court in *ITC Limited v. State of Uttar Pradesh and Others* (2011) 7 SCC 493, held as under: -

*"108. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made, **courts have recognised the need to give limited relief in regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation.**"*

(Emphasis supplied)

18. In *Thomas Daniel v. State of Kerala and others*, 2022 (2) SCT 722, a two-Judge Bench of the Hon'ble Supreme Court speaking through Justice S. Abdul Nazeer, observed that no recovery of the excess amount paid to an employee can be effected especially when there was no misrepresentation on the part of the employee concerned. Relevant paragraph of the said judgment is 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

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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.”

(Emphasis supplied)

19. Adverting to the matter at hand, admittedly, the petitioner had not given his express written consent to effect any recovery from his pension. Therefore, in light of Rule 2.2 of the Punjab Civil Services Rules, Volume II and Rule 11 of Haryana Civil Services (Pension) Rules, 2016, any recovery from the petitioner’s pension in absence of his written consent would be arbitrary and illegal. Furthermore, the Hon’ble Supreme Court in the aforementioned judgements has settled the law that no recovery can be effected from a retired employee especially in cases where the excess amount was not disbursed 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.

20. Moreover, the petitioner was neither served with any notice nor afforded an opportunity of hearing prior to the recovery being effected, rendering the entire action in teeth of the principles of natural justice. A two-Judge Bench of the Hon’ble Apex Court in *M/s Daffodills Pharmaceuticals Limited and another v. State of U.P. and another* 2019 (12) JT 283,

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speaking through Justice S. Ravindra Bhat has held that no person can be inflicted with an adverse order without being afforded a minimum opportunity of hearing and a prior intimation of the same. The relevant paragraph of the judgment is reproduced as under:-

*“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. **If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.**”*

(Emphasis supplied)

21. It must be pointed out that the judgment of the Hon’ble Supreme Court in ***Rafiq Masih (supra)*** was subsequently considered by another two-Judge Bench of the Hon’ble Supreme Court in ***High Court of Punjab & Haryana and others v. Jagdev Singh, 2016 (4) SCT 286***, wherein the Court, speaking through Justice D.Y. Chandrachud, held that if an employee has furnished an undertaking agreeing to refund any excess amount that may later be found to have been erroneously paid, the recovery of such excess payment would be legally permissible. The relevant paragraphs of the judgement are reproduced as under:

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“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.* 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:

xx xx xx

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.”

(Emphasis supplied)

22. In the present case, however, there is nothing on record to indicate that the petitioner had, at any stage, furnished an undertaking to the effect that any excess amount subsequently found to have been erroneously paid would be refunded or could be recovered. In fact, learned counsel for the petitioner has placed on record an additional affidavit categorically

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asserting that no such undertaking or affidavit was ever submitted by the petitioner.

23. Furthermore, surprisingly, Respondent No.4–Bank, at the behest of Respondents No. 1 to 3, effected recovery from the petitioner’s personal account on 31.03.2021 under the name and style of “Recovery of Excess Pension”, without obtaining his consent or issuing any prior notice. The recovery was effected despite in the absence of any statutory provision empowering the Respondent-Bank to take an action of this nature, thereby rendering the act wholly arbitrary and without authority of law. Recently, the Reserve Bank of India has also issued the Master Circular dated 01.04.2025 (RBI/2025-26/05) to all agency Banks regarding the disbursement of Government pension. Clause 5 and 6 of the aforesaid circular deal with the refund of excess pension payment to Government and are reproduced as under:

“5. Whenever any excess/overpayment is detected, the entire amount thereof should be credited to the Government account in lump sum immediately, when the excess/overpayment is due to an error on the part of the agency bank. This action is independent of recovery from the pensioner. Agency banks are requested to seek guidance from respective Pension Sanctioning Authorities regarding the process to be followed for recovery of excess pension paid to the pensioners, if any.

6. If the excess/wrong payment to the pensioner is due to errors committed by the government, banks may take up the matter with the full particulars of the cases with respective Government Department for a quick resolution of the matter. However, this must be a time bound exercise and the government authority’s

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acknowledgement to this effect must be kept on the bank's record. The banks may take up such cases with government departments without reference to the Reserve Bank of India."

(Emphasis supplied)

24. Therefore, while the entire excess or overpaid amount is required to be immediately credited to the Government account in lump sum where such excess payment has occurred *due to an error on the part of the agency bank*, in cases where the overpayment has resulted from *mistakes committed by the Government*, the banks are mandated to take up the matter with the concerned Government department, furnishing full particulars of each case. Notably, there is nothing in the circular that authorises agency banks to unilaterally debit or recover the alleged excess amount from the pensioner's account without obtaining his consent or issuing prior notice where the overpayment has resulted from mistakes committed by the Government.

Refixation of Pension after retirement

A. Position of Law under the Punjab Civil Services Rules, Volume II

25. Rule 9.15 of the Punjab Civil Services Rules, Volume II deals with refixation/revision of pension after authorisation and is reproduced as under:

"9.15. Revision of pension after authorisation.— (1) Subject to the provisions of rules 2.1 and 2.2, pension once authorised after final assessment shall not be revised to the disadvantage of the Government employee, unless such revision becomes necessary on account of detection of a clerical error subsequently :

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Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office or by the Accountant-General, Punjab, without the concurrence of the Department of Finance, if the clerical error is detected after a period of two years from the date of authorisation of pension.

(2) For the purpose of sub-rule (1), the retired Government employee shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government employee fails to comply with the notice, the Head of Office shall, by an order in writing, direct that such excess payment, shall be adjusted in instalments by making short payments of pension in future, in one or more instalments, as the Head of Office, may direct.

Note.— An undertaking in triplicate shall be obtained from the applicant who is to receive pension from the Government of Punjab alongwith his application for the grant of pension to the effect that he or in the case of his death his heirs will refund the amount of any pensionary or any other benefit paid to him erroneously or in excess of that due to him and a copy of the undertaking so obtained will be retained each by the pension sanctioning authority and the Accountant-General (Accounts and Entitlement) Punjab and one copy thereof will be forwarded to the District Treasury Officer concerned alongwith the pension payment order.”

(Emphasis supplied)

26. Thus, as per Rule 9.15, the general rule is that pension once authorised after final assessment shall not be revised to the disadvantage of the Government employee. However, revision of pension is permissible if it becomes necessary on account of detection of a ‘*clerical error*’ subsequently. For this purpose, the retired Government employee concerned shall be served with a notice by the Head of Office ‘*requiring him to refund*

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the excess payment of pension’ within a period of two months from the date of receipt of notice by him. If the Government employee fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment shall be adjusted in installments by short payments of pension in future. However, it must be observed that Rule 9.15 expressly states that it is “*subject to the provision of rules 2.1 and 2.2.*”

27. The phrase ‘subject to’ merely subjects the provisions of the subject-sub-sections to the provisions of the master-sub-sections. In situations where no clash arises, the phrase has no operative effect; however, if there is a conflict, it makes clear which provision must prevail. A three-Judge Bench of the Hon’ble Supreme Court in *Printers (Mysore) Ltd. v. M.A. Rasheed* 2004(4) SCC 460, speaking through Justice S.B. Sinha has observed as under:

“18. In *Ashok Leyland Ltd. v. State of Tamil Nadu & Anr.* [2004 (1) SCALE 224] this Court noticed:

"Subject to" is an expression whereby limitation is expressed.
The order is conclusive for all purposes.

19. This Court further noticed the dictionary meaning of "subject to" stating:

"Furthermore, the expression 'subject to' must be given effect to.

In Black's Law Dictionary, Fifth Edition at page 1278 the expression "Subject to" has been defined as under:

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable

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for. *Homan v. Employers Reinsurance Corp*, 345 Mo. 650, 136 S.W. 2d 289, 302"

20. Reliance placed by Mr. Bhat in *K.R.C.S. Balakrishna Chetty and Sons & Co. v. The State of Madras* [AIR 1961 Supreme Court 1152] is misplaced. In that case, an exemption provision contained in Section 5 of the Madras General Sales Tax Act was invoked which could be granted only subject to such restrictions and conditions, as may be prescribed and in that context it was held:

".....On a proper interpretation of the section it only means that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the rules or in the licence itself; that is, a licensee is exempt from assessment as long as he conforms to the conditions of the licence and not that he is entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning, in our opinion, is "conditional upon."

(Emphasis supplied)

28. Furthermore, a Three-Judge Bench of Hon'ble Supreme Court in *Commissioner of Wealth Tax, A.P., Hyderabad v. Trustees of H.E.H. Nizam's Family* 1977(3) SCC 362, speaking through Justice P.N. Bhagwati has held as follows:

"13. Let us assume that the trustee of a trust would be assessable in respect of the trust properties under Section 3, even in the absence of Section 21. But section 3 imposes the charge of wealth tax 'subject to the other provisions' of the Act and these other provisions include Section 21. Section 3 is, therefore, made expressly subject to section 21 and it must yield to that section in so far as the latter makes special provision for assessment of a trustee. Section 21 and it must yield to that section in so far as the latter makes special provision for assessment of a trustee...

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xx xx xx

It would, therefore, be clear on a combined reading of Sections 3 and 21 that whenever assessment is made on a trustee, it must be made in accordance with the provisions of Section 21. Every case if assessment in a trustee must necessarily fall under Section 21 and he cannot be assessed apart from and without reference to the provisions of that section. To take a contrary view giving option to the revenue to assess the trustee under Section 3 without following the provisions of Section 21 would be to refuse to give effect to the words "subject to the other provisions of this Act" in Section 3, to ignore the maxim generalia specialis bus non derogant and to deny mandatory force and effect to the provisions enacted in Section 21... "

(Emphasis supplied)

29. As per sub-rules (2) and (3) of Rule 9.15, where any excess pension has been paid, the Head of Office is required to issue a notice to the employee directing him to refund the excess amount within two months. If the employee does not comply, the Head of Office may order recovery of the excess payment by adjusting it in future installments through short payments of pension, even without the retired employee's consent. Therefore, there appears to be a conflict between sub-rules (2) and (3) of Rule 9.15 and the Note under Rule 2.2(a) Punjab Civil Services Rules, Volume II, which expressly prohibits any recovery from sanctioned pension without the express consent of the pensioner. Since Rule 9.15(1) expressly states that it is **subject to** the provision of Rule 2.2, this Court is of the view that in cases where any excess payment has been made towards the pension of a retired employee, recovery is allowed only with the express consent of

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the employee. This interpretation is also in consonance with the judgement of the Hon'ble Supreme Court in **Rafiq Masih**'s case (supra).

30. At this juncture, it must also be pointed out that a combined reading of Rule 9.4(b)(iii) and Rule 6.19(c) of the Punjab Civil Services Rules, Volume II indicates that pension must be calculated on the basis of the employee's last drawn pay. The authorities are required to check only the accuracy of the emoluments for the 24 months immediately preceding the date of retirement, and not for any earlier period. Rule 9.4(b)(iii) is reproduced as under:

*“(iii) Calculation of Average emoluments.—For the purpose of calculation of average emoluments, the Head of Office shall verify from the service book, the correctness of the emoluments drawn during the last ten months of service. **In order to ensure that the emoluments during the last ten months of service have been correctly shown in the service book, the Head of Office may verify the correctness of emoluments for the period of twenty-four months preceding the date of retirement of a Government employee, and not for any period prior to that date.**” (Emphasis supplied)*

31. The following observations made by a Co-ordinate Bench of this Court in **Sarabjit Kaur vs. State of Punjab and others CWP-881-2015**, decided on 02.05.2017 are worth noting in this regard:

“I am of the view that the increments were wrongly granted. However, then the question would arise whether after 14-20 years of the grant of said increments, the same can be withdrawn, stating that these were wrongly granted? A perusal of Rule 9.4(b)(iii) read with Rule 6.19(c) of the Punjab Civil Services Rules, Volume II shows that for reckoning pension, the last drawn pay is to be seen and the office is to verify only the correctness of the emoluments for



the period of 24 months preceding the date of retirement of the Govt. Employee and not for any period prior to that date. Therefore, the Accountant General was not justified in checking up the entire service record of the petitioner to see whether from the initial stage, the increments of proficiency step ups were correctly granted or not. Therefore, the order of withdrawing the proficiency step ups granted on 03.07.1993 and 03.07.1999 are contrary to Rule 9.4(b)(iii) of the Punjab Civil Services Rules, Volume II. Even if, it is assumed that the pay was wrongly fixed, in view of the authority of Hon'ble the Supreme Court "State of Punjab and others etc. v Rafiq Masih (White Washer) etc.", 2015(2)SCC (Civil) 608, the recovery cannot be effected from the retiral dues of the petitioner.

In somewhat similar circumstances, the Apex Court in "Sushil Kumar Singhal v Pramukh Sachiv Irrigation Department and Ors.", 2014 (3) S.C.T. 98, quashed the refixation of the pay and the recovery orders. In the Rule under consideration in the said case, the pension fixation authority then enquire the emoluments only for last 10 months, whereas under Rule 9.4(b)(iii) of the Punjab Civil Services Rules, Volume II, the correctness of the emoluments for the period of 24 months preceding the date of retirement of the Govt. employee and not for any period prior to that date, are verified."

(Emphasis supplied)

32. In view of the aforementioned statutory provisions and judgements, the following position of law emerges with respect to the Punjab Civil Services Rules, Volume II:

- a. The general rule is that pension once authorised after final assessment shall not be revised to the disadvantage of the Government employee. However, such revision is permissible if it becomes necessary only on account of detection of a **clerical error** subsequently. If the clerical error is detected after a period of two years from the date of

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authorisation of pension, revision of pension can be ordered only with the concurrence of the Department of Finance.

- b. A revision of pension that adversely affects a Government employee, when undertaken after an unduly long delay, is not permissible if the resulting hardship, inequity, or arbitrariness would outweigh the employer's right to revise the pension.
- c. An order revising pension can be passed only after serving the employee with a notice and affording him a fair opportunity of hearing. Any order issued in the absence of such notice and opportunity is illegal and void.
- d. In cases where excess pension has been paid and recovery is contemplated, the general rule flowing from the Note under Rule 2.2(a) of the Punjab Civil Services Rules, Volume II and the judgment of the Hon'ble Supreme Court in *Rafiq Masih (supra)* is that no recovery can be made from a retired employee in the absence of his express consent. However, where the employee has furnished an undertaking to refund any excess amount that may subsequently be discovered to have been erroneously paid, such recovery becomes legally permissible, in view of the Note under Rule 9.15 and the decision of the Hon'ble Supreme Court in *Jagdev Singh (supra)*.

B. Position of Law under the Haryana Civil Services (Pension) Rules, 2016

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33. Rule 78 of the Haryana Civil Services (Pension) Rules, 2016, as applicable to the employees of the State of Haryana deals with refixation/revision of pension and is reproduced as under:

“78. Refixation of pension.—

(1) Subject to the provision as laid down in rule 10 and 12, and also with the approval of the Finance Department, the pension once authorised shall not be refixed to the disadvantage of the Government employee, unless such refixation becomes necessary on account of—

(a) detection of a clerical error subsequently;

(b) refixation of pay at lower stage with retrospective effect:

Provided that no refixation of pension to the disadvantage of the pensioner shall be ordered by the pension sanctioning authority after a period of five years from the date of authorisation.

(2) Where the pension is refixed under (a) or (b) above, the pensioner concerned shall be served with a notice by the pension sanctioning authority, by registered post, for refixation of pension and the pensioner shall send his reply within two months from the date of receipt of notice. In case the pensioner fails to comply with the notice, the pension sanctioning authority shall, send the case to the Principal Accountant General (Accounts & Entitlement), Haryana for refixation of pension and revised pension payment order.

34. A perusal of Rule 78 reveals several significant distinctions when compared with the corresponding Rule 9.15 of the Punjab Civil Services Rules, Volume II. *First*, Rule 78 is expressly made subject to Rule 10 (Pension subject to future good conduct) and Rule 12 (Power of the appointing authority to withhold or withdraw pension) of the Haryana Civil Services (Pension) Rules. Notably, unlike Rule 9.15 of the Punjab Civil Services Rules, Rule 78 is not made subject to Rule 11 of the Haryana Civil

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Services (Pension) Rules, which governs the recovery of Government dues or other amounts from pension (corresponding to the Note under Rule 2.2(a) of the Punjab Civil Services Rules). *Secondly*, although Rule 78 lays down the general rule that pension once authorised shall not be refixed to the detriment of the Government employee, it nevertheless permits such refixation, with the approval of the Finance Department, where it becomes necessary in two limited circumstances: (i) the subsequent detection of a clerical error, and (ii) refixation of pay at a lower stage with retrospective effect. *Thirdly*, Rule 78 contains an express bar against refixation of pension to the disadvantage of the pensioner *after the expiry of five years from the date of its authorisation*.

35. Furthermore, Rule 78 similarly mandates that any refixation of pension may be undertaken only after issuing a notice to the employee. If the pensioner does not respond or comply with such notice, the pension-sanctioning authority is required to forward the matter to the Principal Accountant General (Accounts & Entitlement), Haryana for refixation of pension. Significantly, unlike Rule 9.15 of the Punjab Civil Services Rules, Rule 78 does not stipulate that the notice may relate to the “**refund of excess payment of pension.**” In light of this distinction, this Court is of the view that Rules 11 and 78 of the Haryana Civil Services (Pension) Rules operate in entirely different spheres. Rule 11 specifically governs the recovery of any excess amount from the pension of an employee, whereas Rule 78 addresses situations where pension requires refixation due to the subsequent

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detection of a clerical error or the refixation of pay at a lower stage with retrospective effect. Consequently, wherever recovery of excess payment from a Government employee's pension is contemplated, Rule 11 only must apply and therefore, recovery cannot be effected except with the express written consent of the pensioner.

36. In view of the above, the following position of law emerges under the Haryana Civil Services (Pension) Rules, 2016:

- a. Subject to Rule 10 (Pension subject to future good conduct) and Rule 12 (Power of the appointing authority to withhold or withdraw pension) of the Haryana Civil Services (Pension) Rules, 2016, the general rule is that pension once authorised shall not be revised to the disadvantage of the Government employee. However, such revision is permissible under Rule 78 with the approval of the Finance Department, where it becomes necessary in two limited circumstances:
 - (i) the subsequent detection of a clerical error;
 - (ii) refixation of pay at a lower stage with retrospective effect.
- b. No refixation of pension to the disadvantage of the pensioner shall be ordered by the pension sanctioning authority after a period of five years from the date of authorisation.
- c. An order revising pension can be passed only after serving a notice on the employee and affording him a fair opportunity of hearing. Any order issued in the absence of such notice and opportunity is illegal and void.
- d. In cases where excess pension has been paid and recovery is contemplated, the general rule flowing from Rule 11 of the Haryana

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Civil Services (Pension) Rules, 2016 and the judgment of the Hon'ble Supreme Court in *Rafiq Masih (supra)* is that no recovery can be made from a retired employee in the absence of his express consent. However, where the employee has furnished an undertaking to refund any excess amount that may subsequently be discovered to have been erroneously paid, such recovery becomes legally permissible, in view of the decision of the Hon'ble Supreme Court in *Jagdev Singh (supra)*.

CONCLUSION

37. Abrupt recovery of pension without the knowledge of the pensioner, even if administratively justified, produces consequences far beyond the legal sphere. Such an action undermines the very object of providing pension to the retired employees, i.e. to secure the economic dignity and emotional stability in the post-retirement stage of life. From a financial standpoint, it causes immediate hardship as the predetermined plans on the basis of legitimate expectation of a certain amount of pension, suddenly become unfeasible. Moreover, pensioners often depend entirely on their monthly pension to meet essential household and medical expenses. Therefore, sudden deductions disturb their financial equilibrium and may lead to inability to meet healthcare needs or other basic expenses. The absence of prior communication generates shock, anxiety, and a feeling of betrayal after long years of service. At an administrative level, such actions

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erode confidence in the fairness and credibility of the employer or government department. Such conduct reflects procedural insensitivity and weakens the morale among both serving and retired employees which often results in a lack of motivation to perform well. The absence of transparency and compassion diminishes the institution's hard earned ethical standing and public trust.

38. In that vein, this Court is of the considered opinion that arbitrary or un-communicated recoveries contradict the spirit of a welfare administration and demonstrate a lack of humane consideration. Overall, the effect of such abrupt recovery extends beyond administrative error; it reflects on the sensitivity, fairness, and accountability of governance itself. Therefore, even where legal remedies exist, administrative prudence demands that any recovery from pension be preceded by due notice, consultation, and empathetic handling consistent with the dignity of the retired employee.

39. In view of the above discussion, the present petition is allowed. Consequently, the impugned order dated 16.11.2022 (Annexure P-4) is hereby quashed and set aside. The Respondents are directed to refund the amount recovered from the petitioner, along with interest at the rate of 6% per annum from the date of institution of the present writ petition until the date of actual payment. Such payment shall be made within a period of three months from the receipt of a certified copy of this order.

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40. Furthermore, the Reserve Bank of India is directed to issue appropriate instructions to all agency Banks, clarifying that no recovery of excess amount from the pension of a Government employee shall be effected without the pensioner's knowledge and consent, or without the issuance of a prior notice. Any such recovery must strictly conform to the applicable service rules and the principles discussed hereinabove.

41. Pending application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

November 04, 2025

P.C

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No