

ORDER ON INTERIM RELIEF
In Claim Petition No. 89/DB/2023

Dated: 13.06.2023.

Present: Sri Anil Anthwal, Advocate, for the Petitioner.(online)
Sri V.P.Devrani, A.P.O., for Respondents.

Counter Affidavit has been filed by Ld. A.P.O. on behalf of Respondents No. 1 to 4, which is taken on record.

Ld. Counsel for the petitioner pressed interim relief, which is vehemently opposed by Ld. A.P.O., primarily on the ground that the petitioner has given consent on 22.12.2022 for adjusting the excess payment made to him from his monthly pension. At present a sum of Rs. 25,000/- is being deducted from his monthly pension. Ld. A.P.O. has also pointed out that the petitioner has given undertaking that he will deposit the entire excess payment when he is able to manage such huge sum. Ld. A.P.O. further pointed out that the excess payment made to the petitioner came to the notice when the Audit Team inspected the office of the District Education Officer, Tehri Garhwal. In audit para, a direction was given by the Audit Team to remove the objection raised by it.

Assuming, for the sake of arguments, that excess payment was made to the petitioner when he was in service, the fact remains that the same was consequent upon a mistake committed by the respondent department in determining the emoluments payable to the petitioner. Again assuming for a moment, the petitioner was in receipt of monetary benefit beyond the due amount, on account of unintentional mistake committed by the respondent department, as argued by Ld. A.P.O., the fact remains that the petitioner is retired Assistant Teacher, a Group 'C' employee, who retired on 31.03.2016.

Hon'ble Apex Court in the decision rendered in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334, has observed thus:

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

Ld. A.P.O. objected that the benefit of Rafiq Masih decision (*supra*) cannot be given to the petitioner because the petitioner has given consent for deduction of excess payment from his pensionary benefits.

Petitioner's case is *prima facie* covered by the decision rendered by Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334. Therefore, there should be stay on further recovery of excess payment from the pension of the petitioner during the pendency of the claim petition.

The effect of petitioner's giving consent to deduct such amount would be considered at the time of final hearing of the claim petition. Further recovery from petitioner's retiral dues appears iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employees' right to recover.

Prayer for interim relief is disposed of by directing that there shall be no further recovery of excess amount from the pensionary benefits of the petitioner during the pendency of present claim petition.

Ld. A.P.O. seeks and is granted time to file C.A./W.S. on behalf of Respondent No.5.

List on 25.07.2023 for further orders.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN