



2026:AHC:54171

HIGH COURT OF JUDICATURE AT ALLAHABAD
WRIT - A No. - 2669 of 2026

Rampati

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Balram Jee Verma
Counsel for Respondent(s)	:	C.S.C.

Court No. - 39
(Sl. No.22)

HON'BLE ANISH KUMAR GUPTA, J.

1. Learned Standing Counsel for the State has supplied the written instructions which are taken on record.

2. Heard Shri Balram Ji Verma, learned counsel for the petitioner and Shri Prem Shankar Mishra, learned Standing Counsel for the State.

3. The instant petition has been filed by the petitioner herein seeking quashing of the order dated 09.12.2025 whereby recovery of Rs. 4,78,991/- has been ordered against the petitioner due to wrong fixation of salary of her husband- Late Ram Dulare Yadav, who was working as Section Mistri in the office of respondent no.2.

3. Briefly stated facts of the case are that the husband of the petitioner, Late Ram Dulare was working as Section Mistri in the Irrigation Department. He retired on 31.08.2016. On implementation of 7th Pay Commission, his pension etc. were recalculated and paid by the respondents. Subsequently, the husband of the petitioner has died on 24.04.2025. After the death of the husband of the petitioner, vide impugned order dated 09.12.2025 the respondents issued a recovery notice against the petitioner with regard to the amount of pension, which was wrongly calculated in favor of the husband of the petitioner.

4. Learned counsel for the petitioner has relied upon the judgment of Apex Court in **State of Punjab and others vs. Rafiq Masih, 2015 (4) SCC 334** and relying upon the aforesaid judgment he submits that no recovery can be initiated against the petitioner as the husband of the petitioner was a Group-

D employee in the Irrigation Department and he had no role to play in fixation or calculation of the pay/pension to the husband of the petitioner at the relevant time nor any prior undertaking was taken from the husband of the petitioner at the time of such fixation/calculation of pay/pension to the husband of the petitioner.

5. Learned Standing Counsel for the State relies upon the undertaking given on 17.11.2023 by the husband of the petitioner whereby he has agreed to deposit arrears, if any, which have been wrongly paid to the husband of the petitioner and thus submits that since an undertaking was given by the husband of the petitioner, the recovery is proper in terms of the judgment in **High Court of Punjab & Haryana v. Jagdev Singh, (2016) 14 SCC 267**.

6. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case. From the record, it is apparent that the husband of the petitioner has retired on 31.08.2016 and thereafter applying the 7th Pay Commission, his pay/pension was recalculated. It is the case of the respondents that it has been wrongly calculated and excess amount has been paid to the husband of the petitioner. From the record, it is apparent that no undertaking was ever taken from the husband of the petitioner at the time of such re-fixation or recalculation. Rather at some later stage on 17.11.2023 some undertaking has been allegedly taken from the husband of the petitioner. The husband of the petitioner has also expired in April 2025 and thereafter in December 2025 the instant recovery order has been passed by the respondents. In **Rafiq Masih (supra)**, the Apex Court has observed as under:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from 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."

7. In ***Jagdev Singh (supra)***, the Apex Court has observed as under:

"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."

8. From the aforesaid, it is apparent that the husband of the petitioner was admittedly a Group- D employee and he has no role in the fixation of pay/pension to the husband of the petitioner. Therefore, in terms of the judgment of ***Rafiq Masih (supra)*** no recovery can be initiated against the petitioner herein. So far as the undertaking is concerned, it has to be taken at the time of re-fixation of the pay/pension. However, any subsequent undertaking will not bind the employee and not authorize the respondents to recover the said amount which has been wrongly paid due to wrong calculation mistakenly by the respondents.

9. In such view of the matter, the instant petition is **allowed** and recovery order dated 09.12.2025 is hereby set aside.

(Anish Kumar Gupta,J.)

March 17, 2026

Ashish Pd.