



2026:AHC-LKO:19392

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 13777 of 2025

Vinod Kumar Shukla

.....Petitioner(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Deptt.
Home Lko. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s) : Shiv Kumar
Counsel for Respondent(s) : C.S.C.

Court No. - 7

HON'BLE MANISH MATHUR, J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging a portion of Pension Payment Order dated 28.07.2025 whereby petitioner's pension has been fixed showing last pay of Rs.60,400/-. Also under challenge is the order dated 16.07.2025 re-determining petitioner's pay scale with effect from 01.10.2008. Further prayer has been sought to opposite parties to re-fix pension of petitioner on the basis of Rs.64,100/- as the last pay drawn in terms of which benefit has been granted to similarly situated persons.

3. Learned counsel for petitioner submits that petitioner retired from the post of Sub-Inspector Civil Police on 31.12.2024 on attaining the age of superannuation and by means of impugned order, recovery has been effected without affording him any opportunity of hearing, for benefits which petitioner has been drawing for the past eighteen years. It is submitted that impugned order does not indicate any complicity or misrepresentation on part of petitioner in the alleged excess payment of salary. He has relied upon judgment rendered by Hon'ble the Supreme Court in ***State of Punjab & others v. Rafiq Masih (White Washer) & others*** reported in **(2015) 4 SCC 334**.

4. Mr. Ram Pratap Singh Chauhan, learned State Counsel has adverted to the counter affidavit to submit that such re-adjustment and recovery has been made in view of undertaking given by

petitioner which has been brought on record as Annexure - CA4.

5. Learned counsel for petitioner has refuted submissions on the basis of averments made in paragraph - 13 of rejoinder affidavit and states that no such undertaking was ever given in the year 2008. From a perusal of Annexure - CA4 to the counter affidavit also, it appears that there is no date indicated in the undertaking from which it can be ascertained that such an undertaking was given by petitioner in the year 2008.

6. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is evident from a perusal of impugned order dated 16.07.2025 that re-fixation of pay of petitioner with effect from 2008 has been effected along with directions for recovery but it is also evident that prior to passing of impugned order, no opportunity of hearing has been provided to petitioner.

7. Hon'ble the Supreme Court in ***State of Punjab & others v. Rafiq Masih*** (supra) has clearly enunciated that recovery cannot be effected from salary of Class III and Class IV employees particularly when there is no allegation of any fraud or misrepresentation on part of the employee.

8. Learned counsel for petitioner has relied upon judgment rendered by Hon'ble the Supreme Court in ***Sushil Kumar Singhal v. Pramukh Sachiv Irrigation Department and others*** reported in ***2014(2) ESC 271 (SC)*** in which Hon'ble the Supreme Court was seized of a similar dispute and placing reliance on Government Order dated 16.01.2007 has held that if any mistake had been committed in pay fixation prior to retirement then by virtue of Government Order dated 16.01.2007 neither any salary paid by mistake could have been recovered nor pension could have been reduced since records of 34 months prior to superannuation only could be examined for the purpose of grant of pension.

9. The said aspect has also been considered by Hon'ble Supreme Court in the case of ***Jagdish Prasad Singh Vs. State of Bihar and others (2024) 8 SCR 377*** in the following manner:-

"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)

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)

23. In the case of **State of Punjab and Others V. Rafiq Masih (White Washer) and others [(2015) 4 SCC 334]**, this Court held as under:-

"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. (emphasis supplied)

24. Recently, this Court in **Thomas Daniel V. State of Kerala and Others [2022 SCC OnLine SC 536]**, held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years.

25. The Government Resolution dated 8th February, 1999 to be specific, the highlighted portion supra is amenable to the interpretation that it protects the status and pay of those employees who had received their time bound promotions prior to 31st December, 1995. As a consequence, the Secretary concerned, while rejecting the representation clearly misinterpreted and misapplied the said Resolution to the detriment of the appellant.

26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he 4 2022 SCC OnLine SC 536 had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The

impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained."

10. Upon applicability of the aforesaid judgement in the present case and considering the facts and circumstances of this case, it is quite evident that re-fixation of pay scale, therefore, is clearly against verdict of Hon'ble Supreme Court in the case of **Jagdish Prasad Singh** (supra) not to mention the Government order dated 16.1.2007.

11. The aforesaid aspect has also been considered in the case of **Sushil Kumar Singhal** (supra) in the following manner:-

"7. Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the Appellant, it is not in dispute that the Appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs. 11,625/- and on the basis of the said salary his pension had been fixed as Rs. 9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the Appellant could have been recovered nor pension of the Appellant could have been reduced. "

"11. The submission made on behalf of the learned Counsel appearing for the Respondent that the Appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the Respondent-employer could not have passed any order for recovery of the excess salary paid to the Appellant or for

reducing pension of the Appellant. "

12. Considering aforesaid pronouncements, it is evident that the impugned orders are clearly against the dictum enunciated by Hon'ble the Supreme Court in the aforesaid judgments. In view thereof, the portion of impugned order dated 28.07.2025 whereby petitioner's pension has been re-fixed as Rs.60,400/- and order dated 16.07.2025 are hereby quashed by issuance of writ in the nature of Certiorari. Further a writ in the nature of Mandamus is issued commanding the opposite parties to determine pension and pensionary benefits admissible to petitioner on the basis of the last pay drawn. Any recovery made from petitioner shall be refunded within six weeks from the date certified copy of this order.

13. Resultantly, the petition succeeds and is **allowed**.

March 17, 2026
lakshman

(Manish Mathur,J.)