2026:AHC:164855

A.F.R.
Reserved On: 23.07.2026
Delivered On: 06.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 4726 of 2026

Brijesh Singh Dagar

.....Petitioner(s)

Versus

State of U.P. and 5 others

.....Respondent(s)

Counsel for Petitioner(s)	:	Ramesh Chandra Tiwari
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE MANISH KUMAR NIGAM, J.

1. This petition has been filed for the following reliefs:-

> *"i. TO ISSUE a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.02.2025 passed by respondent No.4 (Annexure No.2 to this writ petition).*
>
> *ii. TO ISSUE a writ, order or direction in the nature of certiorari calling for the deduction order passed by respondent No.4 and quash the same.*
>
> *iii. TO ISSUE a writ, order or direction in the nature of mandamus commanding and directing the respondents to return the deducted amount Rs.11,51,840/- from the retiral dues of the petitioner along with interest at the rate of 8% per annum from the date of deduction till the date of actual payment, to meet the ends of justice."*

2. Brief facts of the case are that the petitioner was appointed on the post of Constable in PAC on 20.02.1984. Thereafter, the petitioner was transferred to Civil Police where he was posted as Constable (Driver) and subsequently was promoted as Head Constable (Driver) i.e. a Class-III post. After attaining the age of superannuation, petitioner retired on 31.07.2025. Before the retirement of the petitioner, a notice was sent by respondent No. 4 dated 24.10.2024, calling an explanation from the

petitioner regarding revision of his pay scale and in response to the aforesaid notice, reply was submitted by the petitioner on 26.10.2024, *inter alia* mentioning that petitioner never moved any application for increase of his pay scale, and it was also submitted by the petitioner that petitioner is likely to retire soon and had several liabilities to take care of. Rejecting the explanation submitted by the petitioner, respondent No. 4 by order dated 15.02.2025, refixed the salary of the petitioner and reduced him from the pay scale of Rs. 64,100/- to Rs. 56,900/- with effect from 01.07.2023 and an amount of Rs. 11,51,840/- was shown to be paid in excess in the order impugned.

3. Contention of learned counsel for the petitioner is that order dated 15.02.2025, refixing the salary of the petitioner with retrospective effect after a lapse of considerable time, is arbitrary. The petitioner has also challenged the recovery of sum of Rs. 11,51,840/- from the post retiral dues of the petitioner in view of the judgments passed by Supreme Court in case of **State of Punjab and others Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, Thomas Daniel Vs. State of Kerala & Ors.; AIR 2022 SC 2153, Jagdish Prasad Singh Vs. State of Bihar and others; (2024) 8 SCR 377** and judgment of this Court in **Writ A No. - 1750 of 2022 (Head Constable Prahlad Singh And Another Vs. The State Of U.P. And 2 Others) decided on 17.03.2025** and in case of **Sampat Singh Vs. State Of U.P. and 4 others, Writ A- No.6282 of 2026,** dated 30.04. 2026.

4. In the counter affidavit, stand taken by the respondents is that petitioner was wrongly granted benefit of second promotional pay scale with effect from 10.11.2008, because of punishment order dated 20.11.2006, and he was also granted third ACP with effect from 10.11.2010, and by the order impugned, the same has been corrected and since excess payment was made to the petitioner, the same is being recovered from the post retiral benefit of the petitioner. It was also stated in the counter affidavit that in paragraph No. 15 of the writ petition, petitioner claims that no undertaking was given regarding the deduction

of any amount from the retiral dues, the petitioner has actually submitted a declaration agreeing to refund of any amount found to be in excess of the permissible limits, in accordance with the rules regarding payments made under heads such as pension, gratuity, and commutation of pension. It has also been submitted in paragraph No. 25 of the counter affidavit that petitioner was erroneously granted second promotional pay scale on 10.11.2008, which has been corrected by the order impugned. The petitioner has not made any serious challenge to the refixation of the salary.

5. It has been further submitted by learned counsel for the petitioner that even if the petitioner has been wrongly paid any amount because of wrong fixation of salary, the same cannot be deducted after lapse of considerable long time in view of the judgments referred above. Petitioner has also submitted that deductions made from the post retiral dues of the petitioner to the extent of Rs. 11,51,840/- is arbitrary and is in teeth of judgments of the Supreme Court as well as this Court. The petitioner has also prayed for refund of the amount, which has been deducted along with interest.

6. In case of **State of Punjab versus Rafiq Masih (supra),** in paragraph No. 12 of the judgment, the Supreme Court held 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 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."

7. Learned counsel for the petitioner also relied upon paragraph Nos. 9, 10, 11, 12 of the judgment in case of **Thomas Daniel Vs. State of Kerala (supra)** which are also 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 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.

10. In Sahib Ram v. State of Haryana 1995 1995 Supp (1) SCC 18 this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order *by the authority concerned, without any misrepresentation on part of the employees. It was held thus:*

> *"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."*

11. In Col. B.J. Akkara (Retd.) v. Government of India (2006 11 SCC 709 this Court considered an identical question as under:

> *"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/ allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):*
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> *(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.*

(b) 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in- service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity

> *of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."*

12. In Syed Abdul Qadir v. State of Bihar (2009) 3 SCC 475 excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

> *"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."

8. In case of **Jagdish Prasad Singh Vs. State of Bihar and others (supra),** the Supreme Court held as under:-

"21. We firmly believe that any decision taken by the State Government to reduce an employees 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, this Court held that when the excess unauthorized 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 herein below: -

"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.

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> *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) ."*

9. In case of **Head Constable Prahlad Singh And Another Vs. The State Of U.P. (supra)** this Court has considered the effect of giving an undertaking at the time of retirement that if any excess amount is paid, the same may be deducted. In paragraph Nos. 10 to 14 of the judgment, this Court has held as under:-

> *"10. In my considered view, this would not apply to attract the judgment of Supreme Court in the case of Jagdev Singh (supra). What has been held in the case of Jagdev Singh (supra) and what has been genuine also that undertaking should have furnished by employee at the time of pay-fixation. This is not a case in hand. Any employee if has furnished any undertaking at the time of retirement that he would be refunding the excess amount, this undertaking is to be taken only in respect of any wrongful computation of pension amount as per the last pay drawn and also the computation amount and calculation of other post retirement dues.*
>
> *11. Such an undertaking cannot be read to mean that employee intended an exercise of re-fixation to be undertaken against him from a back date and that too without notice to him and to further invite resultant recovery due to assessment of excess salary on account of such alleged wrongful pay-fixation.*
>
> *12. Thus any declaration at the time of retirement would not amount to a declaration within the meaning of the judgment of Supreme Court in the case of Jagdev Singh (supra).*

> *13. It is further observed that any option if exercised on a printed format by an employee while exercising the option, and if he did not make particularly any misrepresentation by moving a separate application, such an exercise of option was if approved by the authority, then it is the approving authority who is to be blamed for such pay fixation. Besides this if option is exercised much before the age of superannuation and the error is not detected for the fault of the authority for a considerably long period of time, then the beneficiary cannot be blamed ......"*
>
> *14. In view of the above, therefore, the action by the respondents based upon any declaration made by the employee at the time of re- fixation by choosing an option, would not give any license or certificate to the respondents to rectify the error in pay fixation at the time of retirement and to pass order for consequential recovery."*

10. In the present case, it has not been denied by the respondents that the petitioner was not responsible in any manner for alleged wrongful pay fixation. In the present case, according to the respondents, the wrong fixation of the salary of the petitioner was done in the year 2008, which has been sought to be corrected in the year 2025, after lapse of 17 years. In case of **Sampat Singh Vs. State of U.P. (supra)** in paragraph Nos. 7, 8, 9, this Court has held as under:-

> *"7. There has been recurring and troubling pattern that retired employees are compelled to approach the Court because their pension, gratuity and other retiral benefits are either withheld or unnecessarily delayed by Administrative Authority. It is an accepted position that gratuity and pension are not bounties and employee earns these benefits by dint of long continuous faithful and unblemished service as was held in the case of **D.S. Nakar vs. Union of India reported in (1983) 1 SCC 305.** It is a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without due process of law as per Article 300 as was held in **State of Jharkhand vs. Jitendra Kumar Srivastava reported in (2013) 12 SCC 210.***
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> *8. Retired employees are compelled to engage in prolonged litigation merely to receive their lawful pension and gratuity, their dignity and*

their financial security is severely compromised. Article 21 of the Constitution of India which guarantee the right to life with dignity also extends to individuals in their old age. In the case of ***Ashwani Kumar vs. Union of India reported in (2019) 2 SCC 636****, it was held that there cannot be any doubt that the right to life with dignity is a part of right to life as postulated in Article 21 of the Constitution of India. Such a right would be rendered meaningless if aged person does not have the financial means to take care of his basic necessity and has to depend for it on others.*

9. It is unfortunate that time and again not only this Court but by the Hon'ble Apex Cort it has been held that the State Government cannot reduce the pay scale and recover the excess amount before/or/after retirement of the Government Servant, insofar as the present case is concerned, it is clear from perusal of order impugned that on the ground that wrong fixation has been made in favour of the petitioner in the year 2016 at the time of sixth pay commission and thereafter again same thing has been recorded by way of seventh pay commission, the recovery order has been passed by the respondent No.3."

11. In view of the facts and circumstances of the case and the judgments of the Supreme Court as well as this Court referred above, the recovery of excess amount paid to the petitioner for wrong fixation of salary cannot be sustained.

12. Accordingly, the writ petition is allowed in part and a mandamus is issued to the respondents to refund the amount of Rs. 11,51,840/- which has been deducted from the post retiral dues of the petitioner along with 7% simple interest from the date of deduction till actual payment of the said amount. This exercise is to be completed by the respondents within a period of six weeks from today

(Manish Kumar Nigam,J.)

August 06, 2026
Nitika Sri.