2026:HHC:17413

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 2944 of 2019
Decided on: 15.05.2026

Baldev Singh …….. petitioner

Versus

State of H.P. and others …….respondents

Coram:
Hon'ble Mr. Justice Bipin Chander Negi, Judge
Whether approved for reporting? [1]

For the petitioner : Mr. Vinod Sharma, Advocate.
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For the respondents : Mr. Gobind Korla, Additional Advocate General.

Bipin Chander Negi, Judge (oral)

The present petition has been filed seeking the following reliefs:-

(a) That a writ in the nature of mandamus may kindly be issued to pay all retiral benefits (GPF, Leave encashment and other) to the petitioner immediately for which he is legally entitled to alongwith interest on the factual amount.

(b) That the respondents may kindly be restrained from recovering the amount of Rs.1.00 lac which was paid to the petitioner on account of arrears of three years regular service for which the petitioner is legally entitled to.

(c) That the respondents may further kindly be directed to pay pension as per entitled of the petitioner which comes to Rs.15,000/- after calculation whereas the petitioner is being paid Rs.14,000/- alongwith arrears accrued thereto.

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

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2. Learned counsel appearing on behalf of the petitioner submits that as of September, 2019, the petitioner was drawing a pension of Rs. 14,416/-. Presently, he is stated to be getting a pension of Rs. 20,800/-. In this respect, relevant downloaded documents from the Government website have been placed on record. In view thereof, the present petitioner does not press relief (c) claimed in the present petition.

3. Similarly, learned counsel appearing on behalf of the respondent/State has placed on record letter dated 14.05.2026 addressed to the learned Advocate General by the Conservator of Forests, Wildlife Circle (S), Shimla. The documents appended thereto also provide details of the pension being paid to the present petitioner.

4. The petitioner in the case at hand was engaged as a daily wager in the year 1989 as a Chowkidar in the Wildlife Department of the Forest Division, Kaza, Lahaul and Spiti. Work-charged status was conferred upon the petitioner in the year 2001. Subsequent thereto, his services were regularized w.e.f. 13.01.2003. The petitioner retired on 31.05.2019.

5. From a perusal of the pleadings, it is evident that leave encashment due and payable to the present petitioner has not been paid as, according to the respondents, the DFO, Lahaul and Spiti worked out an excess payment made to the petitioner to

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the tune of Rs. 1,00,528.08 w.e.f. 01.05.2013 to 31.05.2019. It is in the aforesaid backdrop that the said amount paid is sought to be recovered from the present petitioner. On filing of the present petition, recovery sought to be made by the respondent from the petitioner was stayed vide order dated 17.10.2019.

6. Recovery in the case at hand has been ordered to be effected against the petitioner after his retirement on 31.5.2019. Moreover, the petitioner was holding a Class-IV post, therefore, recovery could not have otherwise been effected, more particularly, in the light of the judgment rendered by the Hon'ble Supreme Court in State of Punjab and others vs. Rafiq Masih (White Washer) and others, AIR 2015 SC 696, which in turn has been relied upon by this Court in CWPOA No.3145 of 2019, titled S.S. Chaudhary vs. State of H.P. and others, decided on 24.03.2022, wherein the Court has laid down the following parameters:-

> "35. In view of the aforesaid discussion, as held by Hon'ble Supreme Court in Rafiq Masih's case (supra), it is not possible to postulate all situations of hardship, where payments have mistakenly been made by the employer, yet in the following situations, recovery by the employer 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

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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 be far outweigh the equitable balance of the employer's right to recover.

(vi) Recovery on the basis of undertaking from the employees essentially has to be confined to ClassI/Group-A and Class-II/Group-B, but even then, the Court may be required to see whether the recovery would be iniquitous, harsh or arbitrary to such an extent, as would far overweigh the equitable balance of the employer's right to recover.

(vii) Recovery from the employees belonging to Class-III and Class-IV even on the basis of undertaking is impermissible.

(viii) The aforesaid categories of cases are by way of illustration and it may not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formula and to give any exhaustive list of myriad kinds of cases. Therefore, each of such cases would be required to be decided on its own merit."

7. Accordingly, present petition is allowed and the recovery sought to be made is ordered to be quashed and set aside. The respondents are directed to release the leave encashment on or before 15.06.2026, failing which, the respondents would be liable to pay interest @ of 6% per annum till its realization.

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

(Bipin Chander Negi)
Judge

15th May, 2026
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