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**(2013) 03 P&H CK 0052**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 5852 of 2011 (O and M)

Khub Kala Yadav and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision :** 26-03-2013

**Acts Referred:**

**Citation :** (2013) 171 PLR 71

**Hon'ble Judges :** Tejinder Singh Dhindsa, J

**Bench :** Single Bench

**Advocate :** N.D. Achint, for the Appellant; Harish Rathee, D.A.G., Haryana for State, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Tejinder Singh Dhindsa, J.—The petitioners have filed the instant writ petition impugning the action of the State Govt. in withdrawing the benefit of additional increments that had already been granted to them and accordingly directing recovery in pursuance to the re-fixation of salary. Learned counsel for the petitioner would at the very outset while arguing the matter submit that he is not impugning the action of the State Govt. in re-fixation of the salary and as such the withdrawal of benefit of the additional increment from the petitioners is not being impugned. Counsel would argue that he is confining the scope of the instant writ petition only as regards recovery of the benefit that had already been granted to the petitioners. Towards recovery counsel would argue that the same would not be permissible in the light of the Full Bench judgment of this Court rendered in case of Budh Ram and Others Vs. State of Haryana and Others, . It has been argued that the benefit had been granted to the petitioners not on account of any misrepresentation and concealment of facts but such benefit had been granted by the competent authority on its own. Under such circumstances, counsel would submit that recovery is impermissible.

2. Per contra, learned State counsel would argue that it was only on account of an error that the grant of additional increment on completion of 8/18 years

service including the period of ad hoc service rendered by the petitioners had been granted to them. Learned State counsel would submit that an inadvertent error is always open to rectification and it was towards such exercise that the impugned recovery is sought to be effected.

3. The issue raised in the instant writ petition is no longer *res Integra*. In a recent judgment of the Hon''ble Supreme Court in case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, the Hon''ble Apex Court had clearly held that no general proposition of law had been laid down to the effect that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipient of any excess amount, only then such amount could be recovered. It was held in the following terms:-

16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected overpayment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Govt. officers may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

4. As regards recovery a few exceptions of extreme hardship had been noticed by the Hon''ble Apex Court that is in cases where the employees already stood retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy. The impugned order of re-fixation and recovery pertaining to petitioner No. 1 is dated 8.3.2011 (Annexure P-1) and in relation to petitioner No. 2 is dated 14.3.2011 (Annexure P-2). On a pointed query having been raised, learned counsel has admitted that the date of superannuation of petitioner No. 1 is 30.6.2013 and the date of retirement of petitioner No. 2 falls in the year 2015. Both the petitioners are teachers in the Education Department, State of Haryana. No case has been made out for the petitioners to fall within the category of exceptions as noticed by the Hon''ble Supreme Court in case of Chandi Prasad Uniyal's case (*supra*). As such, the amount towards additional increment that had been granted to the petitioners is open to be recovered in the light of the impugned orders. This Court does not find any infirmity in the same. No merit, petition dismissed.

Petition dismissed.