

**(2001) 09 P&H CK 0128**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.O.C.P. No. 888 of 2000

Nachhattar Singh

APPELLANT

Vs

K.R. Lakhanpal

RESPONDENT

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**Date of Decision:** Sept. 10, 2001

**Acts Referred:**

- Punjab Civil Services (Revised Pay) Rules, 1988 - Rule 12

**Hon'ble Judges:** R.L. Anand, J

**Bench:** Single Bench

**Advocate:** R.K. Chopra, for the Appellant; A.G. Masih, DAG, for the Respondent

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### **Judgement**

R.L. Anand, J.

I have heard the learned counsel for the parties and with their assistance, have gone through the record of the case.

2. Some facts may be noted in the following manner:

Petitioner Nachhattar Singh filed Civil Writ Petition No. 18908 of 1998 against the State of Punjab and others and the said writ petition was disposed of by the Hon"ble Division Bench vide judgment dated 6th December, 1999 and the operative portion of the judgment can be reproduced as follows :

"We have heard learned counsel for the parties. It is not the case of the respondents that the petitioner was in any way instrumental in getting the communication in which there was a typographical error. The petitioner, on the basis of the communication, addressed inter-se between the department, drew the pay as per his option dated September 15, 1988. He has got pension also on that basis now. As per Saheb Ram v. State of Haryana, 1995(2) RSJ 139, it was held that if the incumbent is not instrumental, which might have led to the mistake on the part of the respondents and the incumbent draws higher pay of higher pay scale, the excess payment cannot be recovered. However, if the impugned order is allowed to stand

that would necessarily affect the pension of the petitioner. In the aforesaid circumstances, while holding that the excess amount that might have been drawn by the petitioner on the basis of his option dated September 15, 1988, cannot be recovered from the petitioner. We direct the Government in the Department of Finance to consider the case of petitioner for relaxation under Rule 12 (supra), so that his pension may not be affected. The aforesaid directions be carried out within a period of four months of the receipt of a copy of this order, either from this Court or a certified copy thereof from the petitioner, whichever is earlier.

The writ petition stands disposed of accordingly."

3. The grouse of the learned counsel for the petitioner is that the judgment aforesaid has not been rightly interpreted by the respondents in spite of the fact that there was clear cut directions to the respondents that the arrears of pay and of the fixation of pension of the petitioner cannot be recovered. Rather the government was supposed to relax the rules as per Rule 12 of the Punjab Civil Services (Revised Pay) Rules, 1988 (hereinafter referred to as "the Rules"). Instead of doing that respondent authorities have passed the order dated 16th May, 2000 by rejecting the option under Rule 12 of the Rules. By this order it would tantamount to the dislodging of the directions of the Hon"ble Division Bench.

4. On the contrary, learned counsel appearing for the respondents submits that the directions relied upon by the learned counsel for the petitioner were only abiter. Rather, the operative portion of the judgment was the directions to the respondents to consider the case of the petitioner as to whether any relaxation can be made as per Rule 12 of the Rules. The government has examined the case of the writ petitioner. The relaxation was not permissible through the order dated 16th May, 2000.

5. I have considered the rival contentions of the learned counsel for the parties and am of the opinion that the order dated 16th May, 2001 is direct infringement of the operative portion of the order of the Hon"ble Division Bench which clearly held that the excess amount that might have been drawn by the petitioner on the basis of his option dated 15th September, 1988, cannot be recovered from him. Also it was observed by the Hon"ble Division Bench that if the incumbent drew higher pay in the higher pay scale, even that excess amount could not be recovered. If the later part of the directions of the Hon"ble Division Bench has to be looked into it was only indicative signal to the respondents to relax the case of the petitioner by invoking the Rule 12. Instead of doing that the respondent-authority had clearly undone the ratio of the judgment of the Hon"ble Division Bench. This is not permissible. Resultantly, I strike down the order dated 16th May, 2000 Annexure P-2 and give one more chance to the respondent authorities to implement the directions of the Hon"ble Division Bench in letter and spirit and pass necessary order in the light of the observations made "in the present order. Needful be done within three months From today. If the orders of this Court are not complied with, it wilt be open to the

petitioner to again approach this Court with a contempt petition. Copy of the order be given Dasti to both the parties.

6. Order accordingly.